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6 Frederick Koster
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10 Frederick Koster in Pro Per
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14

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17

18
19
20 **NEXT VIETNAM PROJECTS**
21 **FOUNDATION, INC., ET AL**
22 **Plaintiffs**

23
24
25 **v.**
26
27

Case No.: 8:22-cv-2130- JWHDFM

~~RULE 15(A)~~ AMENDED
DEFENDANT'S ANSWERS,
AFFIRMATIVE DEFENSES
COUNTERCLAIM

28
29 **KOSTER FILMS LLC,**
30 **FREDERICK KOSTER, ET AL**
31 **Defendants**
32

33 Defendant Frederick Koster states as follows:
34

35 **GENERAL DENIAL**
36

37 Pursuant to Rule 8(b), Fed. R. Civ. P., Defendant denies generally all claims not
38 specifically admitted herein.
39

40
41 **INTRODUCTION**
42

43 1. Defendant denies each and every allegation in paragraph 1. Defendant
44 denies that plaintiffs Radix Corporation (VVFH) and Saigon Broadcasting
45 Television Network, Inc. (SBTN) which plaintiffs label and alleges are producers
46 of the film. This allegation is repeated throughout the pleading and defendant
47 denies each and every time this allegation is mentioned.
48

49 2. Defendant admits that the film and interviews are solely in possession of
50 the defendants. Defendant denies each and every other allegation in paragraph 2.
51

52 3. Defendant admits that the individual plaintiffs listed in paragraph 3 agreed
53 to appear in the film. Defendant denies each and every other allegation in
54 paragraph 3.
55

56 4. Defendant admits that My Van International Inc gave permission to use
57 stock footage from a film My Van alleges owns. Defendant denies each and every
58 other allegation in paragraph 4.
59

60 5. Defendant denies each and every allegation in paragraph 5.
61

62 6. Defendant denies each and every allegation in paragraph 6.
63

64 7. Defendant is without knowledge or information sufficient to form a
65 belief as to the truth or the falsity of the allegations contained in paragraph 7.
66

67 8. Defendant is without knowledge or information sufficient to form a
68 belief as to the truth or the falsity of the allegations contained in paragraph 8.
69

70 9. Defendant is without knowledge or information sufficient to form a
71 belief as to the truth or the falsity of the allegations contained in paragraph 9.
72

73 10. Defendant is without knowledge or information sufficient to form a
74 belief as to the truth or the falsity of the allegations contained in paragraph 10.
75

76 11. Defendant is without knowledge or information sufficient to form a
77 belief as to the truth or the falsity of the allegations contained in paragraph 11.
78
79

80 12. Defendant is without knowledge or information sufficient to form a
81 belief as to the truth or the falsity of the allegations contained in this paragraph 12.
82

83 13. Defendant is without knowledge or information sufficient to form a
84 belief as to the truth or the falsity of the allegations contained in paragraph 13.
85

86 14. Defendant is without knowledge or information sufficient to form a
87 belief as to the truth or the falsity of the allegations contained in paragraph 14.
88

89 15. Defendant is without knowledge or information sufficient to form a
90 belief as to the truth or the falsity of the allegations contained in paragraph 15.
91

92 16. Defendant is without knowledge or information sufficient to form a
93 belief as to the truth or the falsity of the allegations contained in paragraph 16.
94

95 17. Defendant is without knowledge or information sufficient to form a
96 belief as to the truth or the falsity of the allegations contained in paragraph 17.
97

98 18. Defendant admits Koster Films LLC is an Arizona Limited Liability
99 Company. Defendant denies each and every other allegation in paragraph 18.
100

101 19. Defendant admits to paragraph 19.
102

103 20. Defendant is without knowledge or information sufficient to form a
104 belief as to the truth or the falsity of the allegations contained in paragraph 20.
105

106 21. Defendant is without knowledge or information sufficient to form a
107 belief as to the truth or the falsity of the allegations contained in this paragraph.
108

109 22. Defendant denies each and every allegation in paragraph 22.
110

111 **JURISDICTION AND VENUE**

112

113 Defendant is not contesting Jurisdiction and Venue.
114

115 23. Defendant is without knowledge or information sufficient to form a
116 belief as to the truth or the falsity of the allegations contained in paragraph 23.
117

118 24. Defendant is without knowledge or information sufficient to form a
119 belief as to the truth or the falsity of the allegations contained in paragraph 24.

120
121 25. Defendant is without knowledge or information sufficient to form a
122 belief as to the truth or the falsity of the allegations contained in paragraph 25.

123
124 26. Defendant is without knowledge or information sufficient to form a
125 belief as to the truth or the falsity of the allegations contained in this paragraph.

126
127 27. Defendant is without knowledge or information sufficient to form a
128 belief as to the truth or the falsity of the allegations contained in paragraph 27,
129 lines 5 through 10. Defendant denies lines 11 through 18 of paragraph 27.

130
131 **STATEMENT OF FACTS**

132
133 28. Defendant is without knowledge or information sufficient to form a
134 belief as to the truth or the falsity of the allegations contained in paragraph 28.

135
136 29. Defendant admits to being director of the film. Defendant is without
137 knowledge or information sufficient to form a belief as to the truth or the falsity of
138 the allegations contained in paragraph 29.

139
140 30. Defendant admits VVFH and SBTN were aware of Defendant from the
141 Defendant being the director, writer and producer of the film "Ride the Thunder".
142 Defendant denies all other allegations in paragraph 30.

143
144 31. Defendant denies that any discussions of other possible projects from 5
145 years ago is material to this lawsuit. Due to these discussions happening 5 years
146 ago, Defendant is without specific knowledge or information sufficient to form a
147 belief as to the truth or the falsity of the allegations contained in paragraph 31.

148
149 32. Defendant denies each and every allegation in paragraph 32.

150
151 33. Defendant denies that VVFH and SBTN are producers. Defendant is
152 without knowledge or information sufficient to form a belief as to the truth or the
153 falsity of the allegations contained in paragraph 33.

154
155 34. Defendant denies that any actions that were done for other possible
156 projects from 5 years ago are immaterial to this lawsuit. Defendant denies that
157 VVFH and SBTN are producers. Due to these possible actions happening 5 years
158 ago, Defendant is without specific knowledge or information sufficient to form a
159 belief as to the truth or the falsity of the allegations contained in paragraph 34.

160
161 35. Defendant admits My Van Corporation donated the use of historical
162 footage to defendants. Defendant denies each and every other allegation in
163 paragraph 35.
164

165 36. Defendant admits that he is the director of the film. Due to this allegation
166 being from over 5 years ago, Defendant is without specific knowledge or
167 information sufficient to form a belief as to the truth or the falsity of the other
168 allegations in paragraph 36.
169

170 37. Defendant denies each and every allegation in paragraph 37.
171

172 38. Defendant denies stating he was a Director for hire. Defendant denies
173 that any discussions of other possible projects from 5 years ago pertain to this
174 lawsuit and is immaterial. Due to the fact that this alleged interview happened over
175 5 years ago, Defendant is without knowledge or information sufficient to form a
176 belief as to the truth or the falsity of the allegations contained in paragraph 38.
177

178 39. Defendant denies stating he was a Director for hire. Defendant denies
179 that any discussions of other possible projects from 5 years ago pertain to this
180 lawsuit and is immaterial. Due to the fact that this alleged interview happened over
181 5 years ago, Defendant is without knowledge or information sufficient to form a
182 belief as to the truth or the falsity of the allegations contained in paragraph 39.
183

184 40. Defendant denies that any discussions concerning other possible projects
185 from 5 years ago is immaterial. Due to the fact that this alleged correspondence
186 happened over 5 years ago, Defendant is without knowledge or information
187 sufficient to form a belief as to the truth or the falsity of the specific allegations
188 contained in paragraph 40.
189

190 41. Defendant admits that he interviewed and filmed interviews during 2018.
191 Mr Pham acted as an interpreter for some of these interviews. Due to these
192 interviews happening 5 years ago, Defendant is without knowledge or information
193 sufficient to form a belief as to the truth or the falsity of the other allegations
194 contained in this paragraph therefore denies all other allegations.
195

196 42. Defendant admits to discussions with various individuals about the
197 making of a feature documentary. Defendant denies each and every other
198 allegation in paragraph 42.
199

200 43. Defendant admits talking with individuals in reference to the making of
201 the film. Defendant denies stating that the film would be distributed through the
202 Next Vietnam Foundation. Inc., which did not exist at this time. Due to these
203 alleged events happening over 4 years ago, Defendant is without knowledge or
204 information sufficient to form a belief as to the truth or the falsity of other the other
205 allegations contained in paragraph 43.

206
207 44. Defendant admits correspondence with Nam Pham concerning the script
208 that the defendant was writing. Defendant admits not sending a script to VVFH and
209 SBTN. Defendant denies each and every other allegation in paragraph 44.

210
211 45. Defendant admits that Mr. Pham, Dr. Hoang, Mr. D. Phan, Dr. T. Phan,
212 Mr. S. Nguyen, Ms. T. Nguyen, and Ms. M. Nguyen agreed to participate in the
213 Film. Defendant denies each and every other allegation in paragraph 45. In
214 reference to the footnote for paragraph 45 (page 12, line 26). Defendant admits
215 that M. Nguyen signed a Talent Release Form Contract. Defendant denies each
216 and every other allegation in this footnote.

217
218 46. Defendant admits providing a script to Mr. Pham. Defendant denies
219 each and every other allegation in paragraph 46.

220
221 47. Defendant admits that as a standard practice in the film industry, during
222 the process of researching to make a documentary film that he talked with many
223 people to ensure historical accuracy. Defendant admits he does not speak
224 Vietnamese. Defendant denies each and every other such allegation in this
225 paragraph.

226
227 48. Defendant denies each and every allegation in paragraph 48.

228
229 49. Defendant denies each and every allegation in paragraph 49.

230
231 50. Defendant admits filming parts of the film in California. Due to these
232 events happening over 4 years ago, Defendant is without knowledge or information
233 sufficient to form a belief concerning the details of these interviews. Defendant
234 denies each and every other allegation in paragraph 50.

235
236 51. Defendant admits to paragraph 51.

238 52. Defendant admits filming interviews in California. Due to these
239 interviews happening up 5 years ago, Defendant is without knowledge or
240 information sufficient to form a belief concerning the details of these interviews.
241

242 53. Defendant admits there were discussions with various individuals about
243 the film. Due to these discussions happening up 5 years ago, Defendant is without
244 knowledge or information sufficient to form a belief concerning the specific details
245 of these discussions.
246

247 54. Defendant admits on November 21, 2019, he sent a group email to
248 individuals and the referenced Exhibit 7 appears to be the email the Defendant
249 sent. Defendant denies that defendant's email was sent to VVFH or SBTN,
250 Defendant denies that VVFH and SBTN are producers.
251

252 55. Defendant denies each and every allegation in paragraph 55.
253

254 56. Defendant admits sending email and Exhibit 8 appears to be that email.
255 Defendant admits there were delays in post-production due to the Covid epidemic
256 and scheduling conflicts. Defendant denies each and every allegation in paragraph
257 56.
258

259 57. Defendant admits a rough-cut version of the film was sent to certain
260 individuals. Defendant denies the allegations of lines 18 to 24. Defendant is
261 without knowledge or information sufficient to form a belief as to the truth or the
262 falsity of the other allegations contained in paragraph 57.
263

264 58. Defendant denies that VVFH and SBTN are producers. Due to this
265 allegation dating back over 3 years, Defendant is without knowledge or
266 information sufficient to form a belief as to the truth or the falsity of the allegations
267 contained in paragraph 59 therefore denies each and every such allegation.
268

269 59. Due to this allegation dating back over 3 years, Defendant is without
270 knowledge or information sufficient to form a belief as to the truth or the falsity of
271 the allegations contained in paragraph 59 therefore denies each and every such
272 allegation
273

274 60. Due to these alleged events happening about 3 years and plaintiffs not
275 listing specific dates, Defendant is without specific knowledge or information
276 sufficient to form a belief as to the truth of each and every allegation contained in
277 paragraph 60.

278
279 61. Defendant admits that Defendants' own the copyright of the film.
280 Exhibit J appears to be a screen shot of the US Copyright registration. Defendant
281 admits there was an attempted publication and distribution of the film by the
282 Defendants in April of 2021 through various internet platforms, but all distribution
283 was almost immediately shut down by plaintiff Ms. M. Nguyen when she sent
284 copyright take down notices to the platforms distributing the film. Defendant
285 denies the allegation that the defendants don't have the full rights to release the
286 film. Due to this event happening over 2 years ago, Defendant is without specific
287 knowledge or information sufficient to form a belief as to the truth of each and
288 every allegation contained in paragraph.

289
290 62. Defendant denies that VVFH and SBTN are producers. Defendant
291 admits receiving an email from Ms M Nguyen in April 2021 that included a cease-
292 and-desist letter that also included other threats.

293
294 63. Defendant admits that there was another attempted publication and
295 release of the film by the Defendants in April of 2021, but it was almost
296 immediately stopped by plaintiff M. Nguyen when she fraudulently sent take down
297 notices to the film distributing platforms. Defendant denies plaintiff's allegation
298 that they do not own the copyright. Defendant is without knowledge or
299 information sufficient to form a belief as to the truth other allegations contained in
300 paragraph.

301
302 64. Defendant admits that there was an attempted release of the film by the
303 Defendants in April of 2021, but it was almost immediately stopped by plaintiff M.
304 Nguyen when she fraudulently sent copyright take down notices to the platforms
305 distributing the film. Defendant is without knowledge or information sufficient to
306 form a belief as to the truth of each and every other allegation contained in
307 paragraph 64.

308
309 65. Defendant admits Ms. M Nguyen sent a demand letter that included
310 threats to Mr. Tooker to intimidate him into sending the film interviews and any
311 related film footage to the law firm she was employed with. Defendant is without
312 knowledge or information sufficient to form a belief as to the truth of each and
313 every allegation contained in paragraph.

314
315 66. Defendant admits to paragraph 66.
316

317 67. Based on Plaintiffs' Exhibit K, Defendant admits to the existence of this
318 email from the Victims of Communism Memorial Foundation (VOC) stating that
319 Defendants tried to donate the interviews and film to VOC. Defendant denies line
320 "On information and belief, this was an attempt by Koster to barter away the Film,
321 Interviews and other material that by rights belong to the Next Vietnam
322 Foundation."

323
324 68. Defendant denies paragraph 68.
325

326 69. Defendant admits that the Interviews have not been sent. Defendant is
327 without knowledge or information sufficient to form a belief as to the truth of each
328 and ever Defendant is without knowledge or information sufficient to form a belief
329 as to the truth of each and every allegation contained in paragraph.
330

331 70. Defendant denies paragraph 70.
332

333 71. Defendant denies committing fraud. Defendant admits that Richard
334 Botkin contracted with Koster Films LLC to produce, direct and write the screen
335 play for the aforementioned film. Defendant admits having copies of this film in
336 his possession.
337

338 **FIRST CAUSE OF ACTION** 339

340 72. Defendant repeats all answers of the foregoing paragraphs as if fully set
341 herein.
342

343 73. Defendant is without knowledge or information sufficient to form a
344 belief as to the truth of each and every allegation contained in paragraph 73
345

346 74. Defendant admits My Van allowed defendants to use historical footage
347 that he claims to own for use in the Defendant's film. Defendant admits 12 seconds
348 of this provided historical footage appears in the film. Defendant denies each and
349 every other allegation in paragraph 74.
350

351 75. Defendant admits that the film rights have not been assigned. Defendant
352 denies each and other every allegation in paragraph 75.
353

354 76. Defendant denies each and every allegation in paragraph 76.
355

356 77. Defendant denies each and every allegation in paragraph 77.

357
358 **SECOND CAUSE OF ACTION**
359

360 78. Defendant repeats all answers of the foregoing paragraphs as if fully set
361 herein.

362
363 79. Defendant denies each and every allegation in paragraph 79.

364
365 80. Defendant denies each and every allegation in paragraph 80.

366
367 81. Defendant denies each and every allegation in paragraph 81.

368
369 82. Defendant denies each and every allegation in paragraph 82.

370
371 83. Defendant denies each and every allegation in paragraph 83.

372
373 84. Defendant denies each and every allegation in paragraph 84.

374
375 **THIRD CAUSE OF ACTION**
376

377 85. Defendant repeats all answers of the foregoing paragraphs as if fully set
378 herein.

379
380 86. Defendant denies each and every allegation in paragraph 86.

381
382 87. Defendant denies each and every allegation in paragraph 87.

383
384 88. Defendant denies each and every allegation in paragraph 88.

385
386 89. Defendant denies each and every allegation in paragraph 89.

387
388 90. Defendant denies each and every allegation in paragraph 90.

389
390 91. Defendant denies each and every allegation in paragraph 91.

391
392 92. Defendant denies each and every allegation in paragraph 92.

393
394 93. Defendant denies each and every allegation in paragraph 93.

395
396 **FOURTH CAUSE OF ACTION**

397
398 94. Defendant repeats all answers of the foregoing paragraphs as if fully set
399 herein.

400
401 95. Defendant is without knowledge or information sufficient to form a
402 belief as to the truth or the falsity of the allegations contained in paragraph 95.

403
404 96. Defendant agrees that the Individuals agreed to appear in the film.
405 Defendant denies each and every other allegation in paragraph 96.

406
407 97. Defendant denies each and every allegation in paragraph 97.

408
409 98. Defendant denies each and every allegation in paragraph 98.

410
411 99. Defendant denies each and every allegation in paragraph 99.

412
413 100. Defendant denies each and every allegation in paragraph 100.

414
415 **FIFTH CAUSE OF ACTION**

416
417 101. Defendant repeats all answers of the foregoing paragraphs as if fully
418 set herein.

419
420 102. Defendant denies each and every allegation in paragraph 102.

421
422 103. Defendant denies each and every allegation in paragraph 103

423
424 104. Defendant is without knowledge or information sufficient to form a
425 belief as to the truth or the falsity of the allegations contained in paragraph 104.

426
427 105. Defendant denies each and every allegation in paragraph 105

428
429 106. Defendant denies each and every allegation in paragraph 106.

430
431 107. Defendant denies each and every allegation in paragraph 107.

432
433 **SIXTH CAUSE OF ACTION**

434
435 108. Defendant repeats all answers of the foregoing paragraphs as if fully set
436 herein.

437
438 109. Defendant denies each and every allegation in paragraph 109.
439

440 110. Defendant denies each and every allegation in paragraph 110.
441

442 111. Defendant denies that My Van did not give permission to use the
443 historical footage provided to the Defendants. Defendant is without knowledge or
444 information sufficient to form a belief as to the truth of each and every allegation
445 contained in paragraph 111 therefore denies each and every one of them.
446

447 112. Defendant denies each and every allegation in paragraph 112.
448

449 113. Defendant admits that the defendants' own the copyright of the film.
450 Defendant denies each and every allegation in paragraph 113.
451

452 114. Defendant denies each and every allegation in paragraph 114.
453

454 115. Defendant denies each and every allegation in paragraph 115.
455

456 116. Defendant denies each and every allegation in paragraph 116.
457

458 **SEVENTH CAUSE OF ACTION**
459

460 117. Defendant repeats all answers of the foregoing paragraphs as if fully
461 set herein.
462

463 118. Defendant denies each and every allegation in paragraph 118.
464

465 119. Defendant denies each and every allegation in paragraph 119.
466

467 120. Defendant denies each and every allegation in paragraph 120.
468

469 **PRAYER FOR RELIEF**
470

471 A. Defendant denies each and every request in paragraph A.
472

473 B. Defendant denies each and every request in paragraph B.
474

475 C. Defendant denies each and every request in paragraph C.
476

477 D. Defendant denies each and every request in paragraph D.

478
479 E. Defendant denies each and every request in paragraph E.

480
481 F. Defendant denies each and every request in paragraph F.

482
483 G. Defendant denies each and every request in paragraph G.

484
485 H. Defendant denies each and every request in paragraph H.

486
487 I. Defendant denies each and every request in paragraph I.

488
489 **AFFIRMATIVE DEFENSE**

490
491 Defendants do not knowingly or intentionally waive any applicable defense and re-
492 serve the right to assert and rely on such other applicable defenses as may become
493 available or apparent during the course of the proceedings. Defendant further re-
494 serves the right to amend his Answer and/or defenses accordingly, and/or delete
495 defenses that they determine are not applicable, during the course of the proceed-
496 ings. Without assuming any burdens that they would not otherwise bear, Defendant
497 asserts the following defenses:

498
499 **FIRST AFFIRMATIVE DEFENSE**

500
501 **LACK OF STANDING**

502
503 1. All Eleven Plaintiffs fail to pass the Supreme Court's three-part test to
504 determine whether a party has standing to sue.

505
506 2. Plaintiffs TRONG PHAN, SON NGUYEN and THANH-MAI NGUYEN
507 (name later changed to Thanh Phuong Le) are suing for Misappropriation of
508 Likeness (Cause of Action 4)

509
510 3. These 3 plaintiffs do not appear in the film that is the issue of this lawsuit
511 (film), nor were they interviewed for the film. In their Declarations which are in
512 the Complaint, these plaintiffs did not state that they appeared in the film or were
513 interviewed.

514
515 4. Plaintiff by the name of DIEP PHAN, is suing for Misappropriation of
516 Likeness (Cause of Action 4). This Plaintiff's name is unknown to the Defendant.

Defendant needs further clarification on this person's name and a visual image of this person. There is no declaration from Diep Phan.

5.Plaintiff NEXT VIETNAM PROJECTS FOUNDATION INC (NVF), (Cause of Actions 2,5,6) states in the complaint that it does not have a contract with Defendants and that this corporation was not in existence during production of the film. NVF also did not provide a single piece of evidence in their 110 pages of exhibits and declarations that would suggest NVF had a business relationship with Defendants.

6.Plaintiff SAIGON BROADCASTING TELEVISION NETWORK INC (SBTN), (Cause of Actions 2,3,6,7) states "Defendants were parties to a contract established by their conduct and mutual representations" which resulted in SBTN copyright ownership of the film. SBTN allegation is in direct violation of Copyright Law of the United States (Title 17). SBTN also did not provide a single piece of evidence in plaintiffs' 110 pages of exhibits and declarations that would suggest SBTN had a business relationship with Defendants.

7.Defendant also asserts that it is not reasonable to believe that with the many complexities of making a feature film, that any reasonable party would ever go into a binding contract strictly through conduct and mutual representations.

8.Plaintiff RADIX CORPORATION (VVFH), (Cause of Actions 2,3,6,7) states "Defendants were parties to a contract established by their conduct and mutual representations" which resulted in VVFH copyright ownership of the film. VVFH allegation is in direct violation of Copyright Law of the United States (Title 17). VVFH also did not provide a single piece of evidence in plaintiffs' 110 pages of exhibits and declarations that would suggest VVFH had a business relationship with Defendants.

9.Plaintiffs NAM PHAM and MINH NGUYEN are suing for Misappropriation of Likeness (Cause of Action 4). Both of these plaintiffs signed written Talent Release Form contracts with Defendants that allowed Defendants full rights to use their Likeness in the film and for marketing of film. As per the Talent Release forms, both of these plaintiffs waived their rights to sue Defendants.

10.Plaintiff MY VAN INTERNATIONAL INC (My Van) is suing for Copyright Infringement (Cause of Action 1). The issue is Defendants' use of 12 seconds of a historical 1970 video that My Van alleges to own. My Van provided this 12 second clip to Defendants and confirmed the permission for use in a series

557 of written emails to Defendant. Defendant asserts that this clip is considered stock
558 footage in the film industry and has little to no monetary value.

559
560 11.Plaintiff CARINA OANH HOANG is suing for Misappropriation of
561 Likeness (Cause of Action 4). Plaintiff states in her declaration that she agreed to
562 be interviewed and appear in the film but later changed her mind.

563
564 **SECOND AFFIRMATIVE DEFENSE**

565
566
567 **BREACH OF CONTRACT BY PLAINTIFFS**

568
569 12.MY VAN in the First Cause of Action alleges Copyright Infringement.
570 My Van states in his pleading that it allowed Defendant to use the video footage.

571
572 13.Defendant asserts that My Van and Defendant established a contract
573 through written email exchanges whereby My Van stated only one condition of
574 use. This one condition was that the footage could only be used in one film and
575 that for consideration he wanted a listing in the credits of the film.

576
577 14.NAM PHAM and MINH NGUYEN in the Second Cause of Action both
578 state they agreed to be in the film. Defendant asserts that Nam Pham and Minh
579 Nguyen both signed written Talent Release Form contracts and breached those
580 contracts with Defendants. These Talent Release Form contracts signed by these
581 plaintiffs allowed Defendants full rights to use their Likeness in the film and for
582 marketing of film. As per the Talent Release forms, both of these plaintiffs waived
583 their rights to sue Defendants.

584
585
586 **THIRD AFFIRMATIVE DEFENSE**

587
588 **Judicial Estoppel**

589
590 15.Judicial Estoppel bars plaintiff NAM PHAM, President of plaintiff NVF,
591 from taking positions in a case that is inconsistent with his position in a prior judi-
592 cial proceeding.

593
594 16.Nam Pham states in his declaration (Exhibit A), that he previously stated
595 under oath in another court case, that his corporation NVF hired Defendant. Now,
596 Nam Pham states that his previous statement under oath was wrong. In this current

lawsuit, Nam Pham now states that plaintiffs VVFH and SBTN have an unwritten contract with Defendant.:

Exhibit A, pg.2, line 25. Page 3. Line 26 – Nam Pham Declaration

“Mr. Koster sued Ms. Minh Nguyen personally for defamation based on her efforts to stop his, and the other Defendants’, wrongdoing. In that lawsuit I submitted a declaration stating, among other things, that the Vietnam Foundation had hired Mr. Koster to work on the Film. Of course, the Vietnam Foundation was not technically formed until December 2019. It would therefore be more precise to say that the producers of the Film – VVFH and SBTN – hired Mr. Koster and raised funds for the benefit of the Vietnam Foundation which, by agreement between the producers, on the one hand, and Mr. Koster, on the other hand, would be the owner of the Film and all related material, and all rights thereto.”

17.Minh Nguyen states in her declaration (Exhibit A), that she previously stated under oath in another court case, that Next Vietnam Projects Foundation Inc (NVF) funded the film but now states that her previous statement under oath was false because NVF didn’t exist at the time. In this current lawsuit she now states that other entities funded the film.

Exhibit E, pg. 2., lines 24-28 – Minh Nguyen’s Declaration:

“I was sued personally for defamation by Mr. Koster in Arizona due to my efforts to stop Mr. Koster’s, and the other Defendants’, misconduct. In that matter, I submitted a declaration wherein I stated, among other things, that the Film was funded by the Vietnam Foundation, which was my understanding at the time. I now understand that the Vietnam Foundation was not technically formed until late 2019, although the Film, and the rights thereto, belong to the Foundation.”

18.Nam Pham’s and Minh Nguyen’s false testimony under oath in that previous lawsuit, convinced the Judge in his ruling that Jurisdiction was not in Arizona. This previous lawsuit included a number of counts against Minh Nguyen including Interference of Business Expectations. The Defendant filed this lawsuit in the attempt to stop Minh Nguyen’s relentless and ruthless personal attacks on Defendant, his family and friends. Richard Botkin, as stated in the complaint, sent the Defendant an email on behalf of Minh Nguyen. In this email, Richard Botkin stated, if Defendant does not do what he is told to do, he will be both personally and professionally destroyed.

FOURTH AFFIRMATIVE DEFENSE

17.22 COPYRIGHT—AFFIRMATIVE DEFENSE—FAIR USE (17 U.S.C. § 107)

19.MY VAN in First Cause of Action alleges Copyright Infringement. Even if My Van has changed his mind about allowing usage of footage, Defendant has used only 12 seconds of a 1 hour 40-minute film. The use is editorial, contains generic streets scenes and is it not a critical part of the film. Also, this is a historical film from 1970 that My Van did not create but has registered a copyright in 2016. Defendant’s opinion is that there is high likely hood that this film is in the Public Domain.

FIFTH AFFIRMATIVE DEFENSE

COPYRIGHT LAW OF THE UNITED STATES (TITLE 17)

20.Plaintiff Nam Pham, President of NEXT VIETNAM PROJECTS FOUNDATION INC (NVF), (Cause of Actions 2,5,6) states in the complaint that NVF does not have a contract with Defendants and that NVF was not in existence during production of the film. NVF alleges ownership of the copyright of the film which is in direct violation of Copyright Law of the United States (Title 17). NVF also did not provide a single piece of evidence in their 110 pages of exhibits and declarations that would suggest NVF had a business relationship with Defendants.

21.Plaintiff SAIGON BROADCASTING TELEVISION NETWORK INC (SBTN), (Cause of Actions 2,3,6,7) states “Defendants were parties to a contract established by their conduct and mutual representations” which resulted in SBTN copyright ownership of the film. SBTN allegation is in direct violation of Copyright Law of the United States (Title 17). SBTN also did not provide a single piece of evidence in plaintiffs’ 110 pages of exhibits and declarations that would suggest SBTN had a business relationship with Defendants.

22.Plaintiff RADIX CORPORATION (VVFH), (Cause of Actions 2,3,6,7) states “Defendants were parties to a contract established by their conduct and mutual representations” which resulted in VVFH copyright ownership of the film. VVFH allegation is in direct violation of Copyright Law of the United States (Title 17). VVFH also did not provide a single piece of evidence in plaintiffs’ 110 pages of exhibits and declarations that would suggest VVFH had a business relationship with Defendants.

23.NVF alleges to be a third party beneficiary of the alleged unwritten contract between VVFH/SBTN and Defendant. Since NVF was not in existence in 2018, NVF can not be an Intended Beneficiary. NVF would instead be an Incidental Beneficiary that has no contractual rights and can not sue in reference to this alleged contract.

SIXTH AFFIRMATIVE DEFENSE

UNJUST ENRICHMENT

24.MY VAN in FIRST CAUSE OF ACTION alleges Copyright Infringement. Defendant asserts that My Van is seeking to recover more than it is entitled to recover in this case, and the award of the judgement sought by My Van would unjustly enrich My Van. Defendant asserts that there is very little to no monetary value to the historical 1970 video footage provided by My Van to Defendant.

25.Defendant asserts that all the PLAINTIFFS are seeking to recover more than they are entitled to recover in this case, and the award of the judgement sought all Plaintiffs would unjustly enrich the Plaintiffs.

SEVENTH AFFIRMATIVE DEFENSE

PAROL EVIDENCE RULE

26.MY VAN in FIRST CAUSE OF ACTION alleges Copyright Infringement. Defendant asserts that the written email that My Van sent to the Defendant was intended to be the full agreement between the parties, and that My Van cannot present any evidence not in writing to establish any terms of the agreement not in the written agreement.

27.NAM PHAM and MINH NGUYEN in the FOURTH CAUSE OF ACTION (Misappropriation of Likeness) stated that Defendant made representations outside of their written Talent Release Form contracts. Defendant asserts that the written agreement with Nam Pham and Minh Nguyen was intended to be the full agreement between the parties, and that Nam Pham and Minh Nguyen cannot present any evidence not in writing to establish any terms of the agreement not in the written agreement.

717
718
719 **EIGHTH AFFIRMATIVE DEFENSE**

720
721 **NO DAMAGE TO PLAINTIFFS**

722
723 28. Defendant asserts that even if Plaintiffs allegations are true, Plaintiffs did
724 not suffer any damages or economic loss.

725
726 **NINTH AFFIRMATIVE DEFENSE**

727
728 **UNCLEAN HANDS**

729
730 29. Defendant asserts that Plaintiffs have committed wrongdoings, and this
731 lawsuit is attempting to benefit from this wrongdoing.

732
733 **TENTH AFFIRMATIVE DEFENSE**

734
735 **LACHES**

736
737 30. Defendant asserts that Plaintiffs has waited an unreasonably long time to
738 file this lawsuit (1 year 7 months since alleged breach), and the Defendant's ability
739 to defend this lawsuit has been severely prejudiced due to this unreasonable delay
740 by denying Defendant's access to documents, physical evidence, witnesses and a
741 reasonably fresh recollection of the events giving rise to this lawsuit.

742
743
744 **ELEVENTH AFFIRMATIVE DEFENSE**

745
746 **FAILURE TO MITIGATE DAMAGES**

747
748 31. Defendant asserts that Plaintiffs have failed to take reasonable steps to
749 reduce or minimize the damages that allegedly occurred. Plaintiffs did not contact
750 the Defendant about the Defendant's alleged breaches (with the exception of Minh
751 Nguyen and Next Vietnam Foundation Inc.) until the Defendant learned of it from
752 the lawsuit. Also, all the Plaintiffs waited 1 year 7 months from the alleged breach
753 to file his lawsuit.

754
755 **TWELVETH AFFIRMATIVE DEFENSE**

LACK OF PRIVITY

32.Radix Corporation Inc (VVFH), Saigon Broadcasting Television Network Inc (SBTN) and Next Vietnam Foundation Inc (NVF) state in the SECOND CAUSE OF ACTION “Defendants were parties to a contract established by their conduct and mutual representations. The Vietnam Foundation is a third-party beneficiary of that contract.” (pg. 19, para 79, line 19)

33.Defendant asserts that there is no contractual relationship or agreement between VVFH, SBTN and NVF and the Defendants. The Defendant never entered into a contract or agreement that relates to the Second Cause of Action. The question arises as to why VVFH, SBTN and NVF did not provide a single item of evidence of this unwritten contractual agreement in plaintiffs’ 110 pages of exhibits and declarations.

THIRTEENTH AFFIRMATIVE DEFENSE

STATUE OF FRAUDS

34.VVFH, SBTN and NVF state in the SECOND CAUSE OF ACTION “Defendants were parties to a contract established by their conduct and mutual representations. The Vietnam Foundation is a third-party beneficiary of that contract.” (pg. 19, para 79, line 19)

35.The Defendant asserts that VVFH, SBTN and NVF are suing under a theory of unwritten contract, but such an unwritten contract would be unenforceable because it is required to be in writing pursuant to California Civil Code 1624(a)(1-7).

36.Defendant asserts that it is not reasonable to believe that with the many complexities of making a feature film, that any reasonable party would ever go into a binding contract strictly through conduct and mutual representations.

FOURTEENTH AFFIRMATIVE DEFENSE

LACK OF ACCEPTANCE

37.VVFH, SBTN and NVF state in the SECOND CAUSE OF ACTION “Defendants were parties to a contract established by their conduct and mutual

representations. The Vietnam Foundation is a third-party beneficiary of that contract.” (pg. 19, para 79, line 19)

38. Defendant asserts that no contract was formed because Defendant never explicitly or through his actions accepted the contract or certain terms of the contract.

FIFTEEN AFFIRMATIVE DEFENSE

RUNNING OF THE STATUTE OF LIMITATIONS

39. VVFH, SBTN and NVF state in the SECOND CAUSE OF ACTION “Defendants were parties to a contract established by their conduct and mutual representations. The Vietnam Foundation is a third-party beneficiary of that contract.” (pg. 19, para 79, line 19).

40. Defendant asserts that there is no contract but even if there was one, recovery in this case is barred by the statute of limitations as VVFH, SBTH and NVF have waited more than 2 years from the date of the alleged breach by the Defendant before filing this lawsuit, and recovery is therefore barred under Code of Civil Procedure 339. The alleged breach of contract by Defendant conveyed in the complaint is November 22, 2019.

SIXTEEN AFFIRMATIVE DEFENSE

LACHES

41. Defendant asserts that Plaintiffs, by citing allegations from over 5 to 10 years ago, have waited an unreasonably long time to file this lawsuit, and the Defendant’s ability to defend this lawsuit has been severely prejudiced due to this unreasonable delay by denying the Defendant access documents, physical evidence, witnesses and a reasonably fresh recollection of the events giving rise to this lawsuit.

SEVENTEENTH AFFIRMATIVE DEFENSE

NO BREACH OF CONTRACT BY PLAINTIFF

836
 837 42. In Defendant's contracts and agreements with plaintiffs My Van, Nam
 838 Pham, Minh Nguyen and Carina Oanh Hoang, the Defendant asserts that Defend-
 839 ant performed all duties owed under the contracts and agreements, and therefore
 840 never breached the agreements.

841
 842
 843 **EIGHTEENTH AFFIRMATIVE DEFENSE**

844
 845 **FAILURE TO STATE A CAUSE OF ACTION**

846
 847 43. The defendant asserts that the plaintiffs have failed to state essential ele-
 848 ments for their causes of action.

849
 850 **NINETEENTH AFFIRMATIVE DEFENSE**

851
 852 **ESTOPPEL**

853
 854 44. The Defendant relied upon the original representations of the Plaintiffs to
 855 his detriment and asks the court to decide this case as if the original Plaintiffs' rep-
 856 resentations are true.

857
 858 **TWENTIETH AFFIRMATIVE DEFENSE**

859
 860 **FRAUD**

861
 862 45. Plaintiff Minh Nguyen states in her pleading that on behalf of plaintiff
 863 NVF, she sent copyright take notices to distribution platforms Vimeo, Ebay and
 864 IMDB to stop Defendants' US Registered Copyrighted film from being released.
 865 Minh Nguyen misrepresentation to these companies that Defendants are not the
 866 copyright owners. Minh Nguyen had signed a Talent Release Form Contract with
 867 Koster prohibiting her from taking any legal activities against Koster and his affili-
 868 ates in reference to the film. This is copyright infringement and greatly harmed De-
 869 fendants.

870
 871
 872 **ADDITIONAL DEFENSES**

873
 874 Defendants reserve the right to assert additional defenses based on infor-
 875 mation learned or obtained during discovery.

WHEREFORE, in the Defendant's belief, this complaint was a manufactured lawsuit specifically designed to be too costly and time consuming for Defendants to legally answer to, so Defendant respectfully request to the Court that it:

A. Dismiss the Complaint in its entirety with prejudice.

B. Deny each and every demand and prayer for relief contained in the Complaint.

C. Award Defendants their costs and reasonable attorneys' fees; and

D. Award Defendants such other and further relief as the Court deems just and proper.

I declare under penalty of perjury that the foregoing is true and correct.

Dated June 9, 2023

Frederick Koster

Frederick Koster Defendant in Pro

COUNTER CLAIM

Defendant Frederick Koster asserts this counterclaim against Plaintiffs; The Next Vietnam Projects Foundation, Inc (NVF), Radix Corporation (VVFH), Saigon Broadcasting Network, Inc. (SGTN), My Van International, Inc. (My Van), Nam Pham (Pham), Carina Oanh Hoang, Diep Phan, Trong Phan, Son Nguyen, Thanh-Mai Nguyen and Minh Nguyen.

THE PARTIES

1. Frederick Koster (Koster), a resident of Arizona
2. Next Vietnam Projects Foundation, Inc (NVF) claims to be a Massachusetts corporation.
3. Radix Corporation (VVFH) claims to be a Texas corporation.

4. Saigon Broadcasting Network, Inc. (SGTN) claims to be a California corporation.
5. My Van International, Inc. (My Van) claims to be a California corporation.
6. Nam Pham (Pham) claims to be a Massachusetts resident.
7. Carina Oanh Hoang claims to be an Australian citizen.
8. Diep Phan claims to be a California resident.
9. Trong Phan claims to be a Texas resident.
10. Son Nguyen claims to be a California resident.
11. Thanh-Mai Nguyen claims to be a California resident.
12. Minh Nguyen (Nguyen) claims to be a California resident and practicing attorney.

JURISDICTION AND VENUE

13. United States District Court for the Central District of California

BACKGROUND

14. In December 2017, Defendant/Plaintiff, Frederick Koster (Koster) was contacted by Plaintiff/Defendant Nam Pham (Pham). Pham told Koster that Pham knew of Koster from a previous film that Koster had directed, produced, and wrote the screenplay for, called Ride the Thunder – A Vietnam War Story of Victory & Betrayal.
15. Pham told Koster that Koster had become very well known in the Vietnamese Community due to the popularity of Ride the Thunder.
16. Ride the Thunder was a theatrical film released in 2015 that was number one at the box office in its opening week (per theater basis, Rentrak). The film had a successful independent limited theatrical run and made the Academy Awards Qualifying List. The film also has been watched by approximately 2.5 million people on Amazon Prime.
17. In January of 2018, Pham asked Koster if he was interested in creating a new film project on the Vietnam War. Koster agreed that he was interested.
18. Pham stated he needed to raise money for the making of this new

956 film. Pham asked Koster if he could help promote this new film project by
957 way of being interviewed on numerous TV and radio shows and making per-
958 sonal appearances at events among other ways to help. Koster, believing
959 that this was an altruistic community non-profit venture by Pham, agreed to
960 help.

961
962 19. Pham asked Koster if Pham could be an actor in the film. Koster agreed.
963 Nam later asked if future plaintiff, Minh Nguyen (Nguyen), could also be an
964 actor in the film. Koster agreed.

965
966 20. Both Pham and Nguyen signed industry standard written Talent Release
967 form contracts allowing Koster to use their likeness and names in the film
968 and marketing thereof. In these Talent Release forms both, Pham and Ngu-
969 yen expressively waived their rights to sue Koster or any of his affiliates.
970 (Exhibits F and H)

971
972 21. As time went along during 2018 and 2019, Koster saw money being raised
973 through many different parties using Koster's name to promote and raise
974 money for this new film.

975
976 22. This fund raising was not by a single non-profit organization but by many
977 different organizations in numerous states and on the Internet. Some were
978 non-profit and others were for-profit businesses. Koster saw no single legal
979 entity operating this fund raising. Nor did he see the legal protocols of a
980 non-profit being administered to this fund raising.

981
982 23. During this time, Pham on many occasions introduced Koster to many dif-
983 ferent individuals to talk about the creation of this new film project.

984
985 24. In 2019, an ongoing dispute started between Koster and Pham in reference to
986 how much money was being raised and how much money was being allo-
987 cated for the making of the film.

988
989 25. Steve Sherman of plaintiff, Radix Inc, on behalf of Pham, sent Koster a writ-
990 ten email stating that if Koster asks for any more money or asks any more
991 questions about it, that Sherman will use his influence and business connec-
992 tions to make sure that Koster never works again. Sherman also stated that
993 he will use the money that was raised for the film to sue Koster.

994
995 26. By September 2019, due to lack of funding Koster had already stopped film

996 production twice. Koster contacted the person that Pham stated was his as-
997 sistant and Koster requested more funding to continue film production.
998 Koster was told by the assistant that there was very little money left.
999

1000 27. Koster stated in a group email to interested people that he will not continue
1001 production of the film until Koster knows how much money was raised and
1002 proof there was still money left for film production. ~~Exhibit plaintiff~~
1003

1004 28. Pham then emailed a simple one-page document of monies raised and also
1005 provided two separate bank statements. Each bank statement contained equal
1006 amounts of about \$45,000 each. The bank statements were from an organi-
1007 zation called You Help Foundation Inc which is not a plaintiff in this case.
1008 Pham was president of this foundation. Labeled at the top of one bank state-
1009 ment was plaintiff's Radix name, "VVFH" and the other bank statement was
1010 labeled "TOE" (an unknown entity to Koster). This TOE entity appeared in
1011 Plaintiffs' ~~complaint~~ exhibit whereby plaintiff SBTN informs their television
1012 audience in order to donate to this new film project, write their checks out to
1013 TOE and mail it to them.
1014

1015 29. On November 22 2019, Nam sent a group email to interested parties stating
1016 to people that he wanted to sue Koster for not finishing the film.
1017

1018 30. All totaled, from May 22, 2019 to November 25, 2019, Koster received 9
1019 sums of money from multiple sources that used numerous delivery methods
1020 to Koster, totaling \$265,000.
1021

1022 31. Koster never received any IRS reporting 1099 forms for this money re-
1023 ceived. When Koster asked about this, Koster was told that no IRS docu-
1024 ments needed to be filed.
1025

1026 32. Also due to the many people and organizations that were involved in this
1027 fund raising, Koster did not know who the single legal entity was, that was
1028 operating this fund raising. Koster was never offered a contract nor were
1029 there any discussions about a contract or agreement about making the film.
1030

1031 33. Although confronted with many difficulties in getting funding to make this
1032 film, Koster realized that his name was advertised to the public in reference
1033 to the making of this new film. Due to this and the importance of this film,
1034 Koster felt compelled to finish making this film anyway and put his own
1035 money into it.

1036
1037 34. In making this film Koster performed the following:
1038

1039 35. During an approximately two-year period, Koster and subcontractor(s) of
1040 Koster, went on about 26 separate travel trips in the making and promotion
1041 of the film.
1042

1043 36. Koster and subcontractor(s) of Koster, traveled to and performed film pro-
1044 duction in Paris France, New York City, Washington DC, Los Angeles CA,
1045 Phoenix AZ, Houston TX and Dallas TX among other cities.
1046

1047 37. Koster conducted approximately 90 videotaped interviews which were pro-
1048 fessionally shot in theatrical 4K format.
1049

1050 38. Koster paid all related expenses and personally produced all film production
1051 both domestically and internationally. Filming days included multiple days
1052 of cast and crew numbering about 80 people per day on set and using multi-
1053 ple cameras to shoot. (See pies)
1054

1055 39. Koster directed, produced, and wrote the screenplay for the film.
1056

1057 40. Koster paid for all related expenses of film pre-production, production and
1058 post-production including salaries of actors, editors, sub-contractors, cater-
1059 ing, travel expenses, lodging, locations fees, rentals of camera, lighting, etc.,
1060 crew, travel expenses (including trip to Paris France) along with other typi-
1061 cal production and postproduction costs like licensing music, b-roll footage,
1062 etc..
1063

1064 41. The \$265,000 that was received by Koster during 2018 and 2019 was put to-
1065 wards the production of the film. The rest of the cost of making the film was
1066 paid by Koster.
1067

1068 42. In 2021, Koster completed the film and sent private screeners to prominent
1069 historians and military figures. The film was highly praised as one of the
1070 best documentaries on the Vietnam War.
1071

1072 ~~43. In 2021, Koster started receiving calls and text messages from the Vietnam-~~
1073 ~~ese community stating that there was a lot more money collected during fund~~
1074 ~~raising that was being reported. Included in these text messages were claims of~~
1075 ~~evidence that much more money was collected. In conversations with other~~

~~members of the Vietnamese community, Koster was told that Pham has been asking many people to write negative letters about Koster. Koster was told everyone that they knew refused to write these letters.~~

43. At the beginning of 2021, through emails and discussions, Koster was made aware that Pham although not the copyright holder of the film, had been trying to sell the film to Netflix and Hulu.

44. On or about April 21, 2021, Koster released his copyrighted film and marketed this film through Vimeo, Ebay and Imdb.

45. On April 22, 2021, plaintiff Nguyen without first directly contacting Koster, emails Koster and cc copies to numerous prominent people claiming that Koster has no right to use her likeness in the film. Nguyen further states among many other false and defamatory statements about Koster, that Koster was committing willful copyright infringement, malicious fraudulent misconduct and disseminating false copyright claims. Nguyen also states that an organization (which is fictitious) is the one who owns the film. (Exhibits A, B, C)

46. Koster, due to never before receiving a Cease and Desist Letter from an attorney, temporarily stops the distribution of the film to the public until he talks with his attorney.

47. Koster's attorney, advised him that what Nguyen sent to him was not a court ordered document and that Nguyen has no legal right to take down Koster's copyrighted film.

48. Koster then released the film again.

49. On April 26 2021, Nguyen, under her title as an attorney for her law firm, Kasowitz Benson Torres LLP, emailed one of Koster's subcontractors, Brian Tooker (Tooker) that stated Koster will soon be criminally charged and will be under criminal proceedings. She is also suing Koster on behalf of an entity that she represents (this entity that she cites is fictitious). Nguyen further states a number of false and inflammatory statements about Koster and then states that unless Tooker sends property owned by Koster to her law firm, Tooker will also be faced with criminal charges and will be sued by her. (Exhibit C)

1116 50. On April 27, 2023, Nguyen sent DMCA copyright take down notices to
1117 Vimeo, Ebay and IMDb. In the documents that Koster received from these
1118 companies, Nguyen claimed that she was the copyright holder. In Nguyen
1119 declaration, she states that she did this take down at the request of plaintiff
1120 Pham and plaintiff Next Vietnam Foundation. (Exhibits D, E, G, I, J)
1121

1122 51. On May 7 2021, Nguyen, under her title as an attorney for her law firm,
1123 Kasowitz Benson Torres LLP, sent another email directed at Koster and
1124 Tooker with cc copies to numerous prominent people. This email reiterated
1125 that Koster was committing willful copyright infringement, malicious fraud-
1126 ulent misconduct and disseminating false copyright claims. Nguyen states
1127 multiple false and inflammatory statements defaming Koster, including that
1128 Koster does not have a written Talent Release contract with her. Nguyen
1129 continues to state that she is in discussions with the District Attorney Office
1130 in commencing a formal criminal complaint that will commence immedi-
1131 ately against Koster and his subcontractor. (Exhibit B)
1132

1133 52. On May 19, 2021, Richard Botkin on behalf of Nguyen, sends an email to
1134 Koster stating the following “I am not sure you grasp fully the seriousness of
1135 these issues nor what failure to comply will mean for you personally, profes-
1136 sionally and financially. ... spare yourself tragic consequences if you fail to
1137 accede to their demands.”
1138

1139 53. In reference to Botkin’s email to Koster. Koster telephones Botkin and
1140 leaves a message to call him. Instead of a call back from Botkin, Koster gets
1141 an email from Nguyen that Botkin is being represented by her law firm.
1142

1143 54. On May 11. 2023, Pham send emails to Koster and cc copies to numerous
1144 prominent people making false claims and defaming Koster. Pham demands
1145 Koster to send his interviews to Nguyen’s law firm, Kasowitz Benson Torres
1146 LLP,
1147

1148 55. In May of 2021, based on Nguyen ‘s threatening letters to sue Koster, Koster
1149 on the advice from Koster’s attorney, was told it was urgent to file a lawsuit
1150 now before Nguyen files one against Koster in California. Koster files a
1151 lawsuit against Nguyen in Arizona State Civil Court for several causes in-
1152 cluding breach of contract and interference of business.
1153

1154 56. As stated in the plaintiffs’ current lawsuit in CA Federal Court against
1155 Koster, both Nguyen and Pham admit in their declarations that they provided

1156 false testimony under oath to the Arizona Judge. Their now admitted false
1157 testimony directly affected the Judge's decision that Jurisdiction was not in
1158 Arizona. Koster did not further pursue this lawsuit.

1159
1160 57. On February 5, 2022, Pham privately emailed Tooker (Koster's subcontractor for film) stating that Pham wants to avoid a lawsuit against Tooker and
1161 will pay Tooker to send Pham the Interviews which are the property of
1162 Koster. Tooker does not send the Interviews.
1163

1164
1165 58. In March of 2022, Koster contacted a large and well-respected US government sanctioned non-profit called Victims of Communism (VOC) to donate
1166 the Koster interviews to VOC.
1167

1168
1169 59. In email correspondence with the VOC, the VOC was extremely impressed
1170 by the interviews and was excited to receive this donation. The VOC told
1171 Koster that they were going to put the interviews on their website and then
1172 create contests for Vietnamese Film makers to see who could make the best
1173 films using these interviews. VOC also talked about premiering the film at
1174 their facility which would have gotten a lot of national attention for the Vietnamese community.
1175

1176
1177 60. The VOC suddenly stopped communicating with Koster. Koster didn't understand what happened until plaintiff Pham presented in Exhibit K in his
1178 complaint that Pham stopped this donation.
1179

1180
1181 61. On March 8, 2022, Pham and Nguyen sent through email to Koster, a written contract to buy the film and the interviews from Koster for \$30,000.
1182 Among the many one-sided conditions in the contract was that there would
1183 be a transfer of copyright ownership of both the film and interviews to Next
1184 Vietnam Foundation, they would have total control of the film including
1185 keeping revenue sources and also re-editing of the film including changing
1186 the credits of the film and that Koster's credit would be downgraded from
1187 Director to co-director.
1188

1189
1190 62. Koster's attorney reviewed the contract and replied in an email to Koster
1191 that the contract was completely one sided in favor of NVF and was dangerous
1192 because it allowed NVF to sue in the future while Koster had no rights
1193 in the contract.
1194

1195 63. On November 23, 2022, plaintiffs Pham, Nguyen and 9 others filed a lawsuit

against defendant Koster and one of Koster's subcontractors, Brian Tooker and his LLC.

~~65. In 2023, Pham, Nguyen and other Plaintiffs made a settlement with code-fendant Tooker. The settlement agreement included Tooker (who at the time had possession of Koster Interviews, film, etc.) giving plaintiffs this Koster copyrighted property to the plaintiffs and then Plaintiffs forbade Tooker from releasing Koster's own property back to Koster.~~

64. May 3, 2023, Plaintiffs submitted to Court a Voluntary Dismissal of code-fendant Brian Tooker and BT Productions, LLC pursuant to Federal Rules of Civil Procedure 41(a) (c).

65. Tooker's attorney, Andrew Pappas, tells Koster that Plaintiffs demanded that Tooker (who at the time had possession of Koster Interviews, film, and other related property) send Koster's property to them. If Tooker did this, in return, the Plaintiffs would withdraw their lawsuit against Tooker. The Plaintiffs then required Tooker not to return any of Koster's property to Koster thus depriving Koster of his own property. (Exhibit K)

66. Andrew Pappas asks Koster not to sue Tooker's for his actions of sending Koster's property to Plaintiffs. Pappas then sent Koster a proposed agreement not to sue Tooker. (Exhibit K) The proposed agreement confirms Koster's ownership of property and confirms that the property was sent to Plaintiffs as was explained to Koster by Pappas.

67. On April 13, 2023, Pham is interviewed live on radio station 900AM Houston in reference to the film. Pham, in a recorded interview, tells the radio audience about the lawsuit and states that he will win in court by default. Pham makes false statements and continues to defame Koster on the radio.

On April 14, Koster is interviewed live on radio station 900AM Houston to counter Pham's previous day's statements.

COUNTERCLAIMS

COUNT 1

(CONVERSION)**(KOSTER AGAINST ALL OF THE PLAINTIFFS/DEFENDANTS)**

1. Koster repeats and reallege all the foregoing paragraphs as if fully set forth herein.
2. Koster claims that Plaintiffs wrongfully exercised control over his property.
3. Plaintiffs substantially interfered with Koster's property by knowingly and intentionally taking possession of Koster's property and preventing Koster from having access to his property.
4. Koster did not consent to Plaintiffs wrongful control over his property.
5. Plaintiffs refused to return Koster's property after he demanded it back.
6. Koster was harmed and Plaintiffs' conduct was a substantial factor in causing Koster's harm.
7. Plaintiffs have acknowledged that they are in possession of Koster's property and stated they will not return it to him.
8. Koster, as director, producer, and screenwriter of the Film, has copyright ownership of all Film property that includes but is not restricted to all the interviews, screenplay, soundtrack, rough cuts of the film, historical footage, and all other related film material along with the hard drives that this property is contained within.
9. Plaintiffs wrongfully, unlawfully and without permission from Koster, has taken Koster's property from Koster's subcontractor, Brian Tooker, who while under duress put forth by the Plaintiffs, sent Koster's property to the Plaintiffs. Tooker's attorney sent Koster an agreement not to sue Tooker because of this. (Exhibit K) Koster did not sign.
10. In addition, the Plaintiffs have also wrongfully, unlawfully, and without permission from Koster, have taken and has in their possession other Koster's property unrelated to the Film that includes previous interviews that Koster has produced throughout his career.
11. Tooker's attorney, Andrew Pappas, has informed Koster that the by demands

of the Plaintiffs, Tooker cannot return Koster's property to him because of the agreement with the Plaintiffs instructing Tooker that he cannot return Koster's property to him.

12. Koster has repeatedly asked for his property to be returned from both the plaintiffs and from Tooker's attorney, Andrew Pappas. Koster's every request for return of his property has been rejected.

13. Plaintiffs intentionally took assumption of control and ownership when Plaintiff Minh Nguyen, knowingly interfered on behalf of Plaintiffs and made false copyright ownership statements in DMCA takedown notices of Koster's film which resulted in stoppage of not only Koster's film property from being released but also all Koster's related copyright material contained within the film such as interviews, script, soundtrack from being released.

14. By Plaintiffs knowingly filing false DMCA Takedown notices to Koster film distributors fundamentally interfered with Koster's ability to use the Koster's film property.

15. Plaintiffs' actions of wrongfully taking and then depriving Koster of his film property has resulted in interference of Discovery and evidence and violated Litigation Privilege according to Cal. Civ. Code § 47(B)(2).

16. Koster did not consent to any of these actions by the Plaintiffs.

17. Koster was harmed in many aspects that include both economic and noneconomic.

18. Plaintiffs misconduct was substantial factor in causing harm to Koster

19. Based on Plaintiffs' actions and on information, Plaintiffs engaged in their actions willfully, with malice, oppression, and fraud.

20. The actions of the Plaintiffs/Defendants have severely and irreparably damaged Koster's reputation, income and financial stability, from which Koster, aged 67 years, will never recover from. Their actions have also caused severe and prolonged emotional distress and health issues for Koster who is a senior citizen.

COUNT 2

17 U.S. Code § 512 (f) – Misrepresentations

- (f)MISREPRESENTATIONS. —Any person who knowingly materially misrepresents under this section—
- that material or activity is infringing, or
- that material or activity was removed or disabled by mistake or misidentification, shall be liable for any damages, including costs and attorneys’ fees, incurred by the alleged infringer, by any copyright owner or copyright owner’s authorized licensee, or by a service provider, who is injured by such misrepresentation, as the result of the service provider relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing, or in replacing the removed material or ceasing to disable access to it.

24. Plaintiff Minh Nguyen knowingly and materially misrepresented copyright ownership information in submitting DMCA Takedown Notices of infringement under 17 USC §512(c)(3) of Koster’s Film to Koster’s film distributors Vimeo and Ebay. Under 17 U.S.C. Section 512(f), any person who knowingly materially misrepresents that material or activity is infringing is subject to liability. Title 17 USC §512(f) provides civil damage penalties, including costs and attorney fees, against any person who knowingly and materially misrepresents certain information in a notification of infringement under 17 USC §512(c)(3).

25. Minh Nguyen in her DMCA Takedown notices to Koster’s film distributors stated in bad faith and under oath with a penalty of perjury that she was the copyright holder of the film “Through Our Eyes – The Vietnam War”.

26. Minh Nguyen willful actions resulted in the stoppage and takedown of Koster’s Film distribution to the public by Vimeo and Ebay.

27. Minh Nguyen is liable under Section 512(f) because she acted in bad faith and actually knew that she was not the copyright holder, and the challenged material was not infringing on any copyright.

28. Minh Nguyen actions were that much willful and malice because she had signed a Talent Release Form that specifically stated that she waived her right to challenge any ownership of the Film of Koster and affiliates.

1354 29. In not being the copyright holder, Minh Nguyen in making her DMCA
 1355 takedown notices, committed perjury and failed the following elements of 17 U.S.
 1356 Code § 512 (3)(A)

1357
 1358 **(3)ELEMENTS OF NOTIFICATION.—**

1359 **(A)**To be effective under this subsection, a notification of claimed infringement
 1360 must be a written communication provided to the designated agent of a service
 1361 provider that includes substantially the following:

1362 **(i)**

1363 A physical or electronic signature of a person authorized to act on behalf of
 1364 the owner of an exclusive right that is allegedly infringed.

1365 **(ii)**

1366 Identification of the copyrighted work claimed to have been infringed, or, if
 1367 multiple copyrighted works at a single online site are covered by a single
 1368 notification, a representative list of such works at that site.

1369 **(iii)**

1370 Identification of the material that is claimed to be infringing or to be the
 1371 subject of infringing activity and that is to be removed or access to which is to
 1372 be disabled, and information reasonably sufficient to permit the service
 1373 provider to locate the material.

1374 **(v)**

1375 A statement that the complaining party has a good faith belief that use of the
 1376 material in the manner complained of is not authorized by the copyright owner,
 1377 its agent, or the law.

1378 **(vi)**

1379 A statement that the information in the notification is accurate, and under
 1380 penalty of perjury, that the complaining party is authorized to act on behalf
 1381 of the owner of an exclusive right that is allegedly infringed.

1382
 1383 30. Koster due to being the director, producer and screenwriter of the Film,
 1384 has copyright ownership of all Film property that includes but is not restricted to
 1385 all the interviews, screenplay and soundtrack. Koster suffered damages as a result
 1386 of Minh Nguyen perjury and willful false statements in her DMCA Takedowns of
 1387 Koster Film.

1388
 1389 31. Koster did not consent to any of these actions by Minh Nguyen.

1390
 1391 32. Minh Nguyen actions caused Koster harm in many aspects that include both
 1392 economic and noneconomic.

33. Minh Nguyen substantially interfered with Koster's property by knowingly and intentionally making false statements under oath in her DMCA Takedowns of Koster's Film.

34. Minh Nguyen's misconduct was a substantial factor in causing this harm to Koster.

35. Based on Minh Nguyen actions and on information, Minh Nguyen engaged in her actions willfully, with malice and fraud.

36. 512 (f) deters false claims of infringement by imposing liability on anyone who makes such claims, for the damages suffered by other parties as a result of the Online Service Provider's reliance on the false claim, and for associated legal fees.

37. The actions of Minh Nguyen have severely and irreparably damaged Koster's reputation, income and financial stability, from which Koster, aged 67 years old will never recover from. Their actions have also caused severe and prolonged emotional distress and health issues for Koster, who is a senior citizen.

Count 1

(KOSTER AGAINST MINH NGUYEN, NAM PHAM, MY VAN INTERNATIONAL INC) (BREACH OF CONTRACT)

~~Koster repeats and reallege all of the foregoing paragraphs as if fully set forth herein.~~

~~—— Koster owns the copyrighted film and has written signed Talent Release Form Contracts with Minh Nguyen (Nguyen) and Nam Pham (Pham) whereby Nguyen and Pham expressly agreed to allow Koster full use of their likeness and performance in the film and to utilize their appearance in connection to the film. This Talent Release Form also states that Nguyen and Nam expressly release Koster, his employees and licensees from and against any and all claims to the invasion of privacy, defamation or any cause of action arising out of production, distribution, broadcast or exhibition of the video.~~

~~—— Nguyen and Pham have repeatedly breached this Talent Release Form through filing a malicious lawsuit against Koster and a Koster licensee,~~

~~defamation, interference of Koster business, illegal DMCA copyright take downs of the film's distribution among other actions.~~

~~———— Koster has suffered tremendously because of this defamation including financially, his reputation and health related issues.~~

~~———— My Van and Koster established a contract through written email exchanges whereby My Van stated only one condition of use of using his historical video footage. This one condition was that the footage could only be used in one film and that for consideration he wanted a listing in the credits of the film. My Van breached this agreement by changing his mind about this video usage of 12 seconds without informing Koster and filing a malicious lawsuit against Koster and a Koster licensee.~~

~~———— The actions of Nguyen, Pham and My Van have severely and irreparably damaged Koster's reputation, income and financial stability, from which Koster, aged 67 years old will never recover from. Their actions have also caused severe and prolonged emotional distress and health issues for Koster who is a senior citizen.~~

~~**-COUNT 2**~~
~~**(KOSTER AGAINST MINH NGUYEN, NAM PHAM, RADIX CORPORATION)**~~
~~**(DEFAMATION)**~~

~~———— Koster repeats and reallege all of the foregoing paragraphs as if fully set forth herein.~~

~~———— Nguyen, Pham and Steve Sherman of the Radix Corporation (VVFH) have willfully and repeatedly (both publicly and privately) severely defamed Koster through public written emails, word of mouth, through the media and the filing of a malicious lawsuit which is now publicly known through Pham's radio interview that he did and also through the many group emails of Nguyen to prominent people that states that Koster is under criminal proceedings.~~

~~———— Nguyen also states that she sent DMCA copyright take down notices to multiple distribution companies including an organization called IMDb. IMDb is one of the most prominent film industry organizations in the world. This severe defamation of Koster to his industry peers is irreparable.~~

~~———— This defamation has caused irreparable and severe damage to Koster's current and future earnings.~~

~~———— This defamation of Koster is openly stated in written emails that Koster has received stating that he will be personally, financially and professionally destroyed. The actions of Nguyen, Pham and VVFH have severely and irreparably damaged Koster's reputation, income and financial stability, from which Koster, aged 67 years old will never recover from. Their actions have also caused severe and prolonged emotional distress and health issues for Koster who is a senior citizen.~~

**COUNT 3
(CONVERSION)
(KOSTER AGAINST ALL OF THE PLAINTIFFS/DEFENDANTS)**

~~———— Koster repeats and reallege all of the foregoing paragraphs as if fully set forth herein.~~

~~———— The Plaintiffs/Defendants are guilty of conversion in reference to Koster copyrighted property along with other solely own property that Koster owns. The Plaintiffs/Defendants have secretly negotiated a settlement with Koster's co-defendant, Brian Tooker. Under duress codefendant Brian Tooker sent property owned by Koster which includes the film, interviews and other related Koster property to the Plaintiffs/Defendants. The Plaintiffs/Defendants then instructed Brain Tooker not to give Koster his own property.~~

~~———— Nguyen's and Pham's willful conduct is more severe since Koster has Talent Release Form Contracts with both Nguyen and Pham that made absolutely clear the terms of their involvement in the film and their rights.~~

~~———— Earlier Nguyen and Pham have sent illegal DMCA takedown copyright notices which deprived Koster of his constitutional right of releasing his copyrighted film.~~

~~The actions of the Plaintiffs/Defendants have severely and irreparably damaged Koster's reputation, income and financial stability, from which Koster, aged 67 years old will never recover from. Their actions have also caused severe and prolonged emotional distress and health issues for Koster who is a senior citizen.~~

COUNT 4

**~~(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)
(KOSTER AGAINST MINH NGUYEN, NAM PHAM, RADIX
CORPORATION (VVFH))~~**

~~———— Koster repeats and reallege all of the foregoing paragraphs as if fully set forth herein.~~

~~———— Nguyen, Pham and Steve Sherman of VVFH with extreme and malicious willful intent have committed multiple vicious attacks designed to traumatize Koster and in their written words, to destroy Koster personally, professionally and financially.~~

~~———— Nguyen's and Pham's conduct is that more outrageous since Koster has Talent Release Form Contracts with both Nguyen and Pham that made absolutely clear the terms of their involvement in the film and their rights.~~

~~———— Threats and severe defamation have not only been executed against Koster but also Koster's family. The threats against Koster's family was especially egregious.~~

~~———— Nguyen, Pham and Steve Sherman of VVFH strategy for the destruction of Koster is that of taking no prisoners. Koster's longtime friend and subcontractor, Brian Tooker, was mercilessly threaten, then defamed and finally maliciously sued by Nguyen, Pham, Steve Sherman of VVFH and the other plaintiffs. Brian facing a lawsuit that he didn't have the money to fight and facing the possibility of bankruptcy if he lost, was extorted in giving up Koster's property to Nguyen, Pham and Steve Sherman of VVFH and the rest of the plaintiffs.~~

~~———— The openly overt and outrageous actions by Nguyen, Pham and Steve Sherman of VVFH are made all that more damaging by their wealth and prominent positions in the community. They attacked vulnerable people who they knew have limited resources and also with Koster being 67 years old would find it difficult to defend himself from this onslaught of vicious attacks himself and his family. The actions of Nguyen, Pham and Steve Sherman of VVFH have severely and irreparably damaged Koster's reputation, income and financial stability, from which Koster, aged 67 years old will never recover from. Their actions have also caused severe and prolonged emotional distress and health issues for Koster who is a senior citizen~~

~~COUNT 5~~

TORTIOUS INTERFERENCE

~~(KOSTER AGAINST MINH NGUYEN, NAM PHAM, RADIX CORPORATION (VVFH))~~

~~———Koster repeats and reallege all of the foregoing paragraphs as if fully set forth herein.~~

~~———Minh Nguyen, Nam Pham and VVFH have wrongfully interfered with Koster's contractual and business relationships.~~

~~———Minh Nguyen and Nam Pham have sent numerous bad faiths cease and desist letters to Frederick Koster while cc'd copying about 18 prominent people on it. In addition, they sent fraudulent DMCA takedown notices to three separate large corporations that Koster does business with, to stop the release of Koster's copyrighted owned film. Their false DMCA statements are perjury and greatly damaged Frederick Koster reputations and business relationships and earnings.~~

~~Frederick Koster had written Talent Release Form contracts with Minh Nguyen and Nam Pham expressly stating that they could not engage in any legal activities against Koster or his affiliates in reference to the copyrighted film that Koster owns.~~

~~———Minh Nguyen, Nam Pham and VVFH have had numerous communications both oral and written to influential people severely interfering forever affecting Koster current and future business relationships.~~

~~———Minh Nguyen, Nam Pham and VVFH conduct was highly willful, reckless, and malicious especially considering their extensive business experience. Minh Nguyen is an Intellectual Property Attorney and knows full well copyright law and the repercussions of violating it by making false claims. Koster has suffered tremendously because of their actions both financially and emotionally.~~

COUNT 6

~~(KOSTER AGAINST MINH NGUYEN, NAM PHAM)~~

FRAUD

~~Minh Nguyen states in her pleading that on behalf of Nam Pham, she sent copyright take notices to distribution platforms Vimeo, Ebay and IMDB to stop Defendants' US Registered Copyrighted film from being released. Minh Nguyen misrepresented to these companies that Defendants are not the copyright owners. Both Minh Nguyen and Nam Pham had signed Talent Release Form Contracts with Koster prohibiting them from taking any legal activities against Koster and his affiliates in reference to the film. This is copyright infringement and greatly harmed and damaged Koster financially.~~

~~Minh Nguyen and Nam Pham fully understood that they were under contract to Koster and that it prohibited them from taking these actions. Koster had depended on Nguyen and Pham to honor those contracts they signed and because they breached their contracts Koster has greatly suffered both financially and emotionally.~~

PRAYER FOR RELIEF

Wherefore, Plaintiff Koster pray that this Court enter a judgement in his favor on each and every claim of relief set forth above and award him relief including but not limited to:

- a. Dismissal of all of Plaintiff's claims with prejudice.
- b. Preliminary and permanent injunctive relief requiring Plaintiffs to return all the Koster property they received from Brian Tooker in their settlement agreement of this lawsuit. And that Plaintiffs submit to the Court and Frederick Koster, the settlement agreement with Brian Tooker to assure that all property is returned.
- c. Declarations from Plaintiffs stating that they did not keep copies of the said properties and they will not use or release these properties in any manner.
- d. Declarations from the Plaintiffs stating that their allegations about all of the Defendants are untrue, and that Plaintiffs will stop all negative publicity and activities against Defendants.
- e. Damages according to Proof

f. Punitive damages.

g. Attorney Fees

h. Costs of suit incurred herein; and

i. Such other relief as the Court may deem just and proper.

Dated: September 8, 2023

Frederick Koster

Frederick Koster Defendant in Pro Per

EXHIBIT A

From: ThucMinh Nguyen
 Sent: Thursday, April 22, 2021 10:16 PM
 To: 'fred@kosterfilms.com' <fred@kosterfilms.com<<mailto:fred@kosterfilms.com>>>;
 Cc: 'namphu8@gmail.com' <namphu8@gmail.com<<mailto:namphu8@gmail.com>>>;
 'trucho@sbtn.tv' <trucho@sbtn.tv<<mailto:trucho@sbtn.tv>>>; 'phi@myvanfilms.com'
 <phi@myvanfilms.com<<mailto:phi@myvanfilms.com>>>; 'thucnhi4@gmail.com'
 <thucnhi4@gmail.com<<mailto:thucnhi4@gmail.com>>>;
 'vuthanhthuy@radiosaigonhouston.com'
 <vuthanhthuy@radiosaigonhouston.com<<mailto:vuthanhthuy@radiosaigonhouston.com>>>;
 'trong.phan@gmail.com' <trong.phan@gmail.com<<mailto:trong.phan@gmail.com>>>;
 'jane.nguyen@alpharealtors.net'
 <jane.nguyen@alpharealtors.net<<mailto:jane.nguyen@alpharealtors.net>>>;
 'tomhoang@hoangla.com' <tomhoang@hoangla.com<<mailto:tomhoang@hoangla.com>>>;
 'ngoan98@yahoo.com' <ngoan98@yahoo.com<<mailto:ngoan98@yahoo.com>>>;
 'duongphuc@radiosaigonhouston.com'
 <duongphuc@radiosaigonhouston.com<<mailto:duongphuc@radiosaigonhouston.com>>>;
 'lienhoahouston13@gmail.com'
 <lienhoahouston13@gmail.com<<mailto:lienhoahouston13@gmail.com>>>;
 'apham2001@yahoo.com' <apham2001@yahoo.com<<mailto:apham2001@yahoo.com>>>;
 'dofamily@aol.com' <dofamily@aol.com<<mailto:dofamily@aol.com>>>;
 'nptruong6025@gmail.com' <nptruong6025@gmail.com<<mailto:nptruong6025@gmail.com>>>;
 'ttaitrinh@gmail.com' <ttaitrinh@gmail.com<<mailto:ttaitrinh@gmail.com>>>;
 'Duong@pragmatics.com' <Duong@pragmatics.com<<mailto:Duong@pragmatics.com>>>;
 'jimmcleroy@aol.com' <jimmcleroy@aol.com<<mailto:jimmcleroy@aol.com>>>
 Subject: ATTN: Fred Koster - TOE CEASE AND DESIST

Fred,

I write regarding the unauthorized use of my image in the film: “Through Our Eyes – The Vietnam War” (the “TOE” film) and respectfully request that you cease and desist all use of my image, name, voice, photograph, and likeness in any commercial medium. This email serves as a last effort to resolve this dispute amicably before I am forced to file suit to protect my intellectual property rights and those of the Vietnamese Community.

To be clear, I have never authorized or consented to the use of my image, verbal or otherwise, for public release of the TOE film. In fact, I was assured repeatedly by you that no version will be released without my express consent. However, without my knowledge and consent, my image and likeness are published on IMBD (available at: <https://www.imdb.com/title/tt10957908/>) and a version of the TOE film is sold on eBay for \$22.94 with shipping (available at: <https://www.ebay.com/itm/124683016989>). Your unauthorized unilateral misconduct flies in the face of the good-will intended by the numerous donors who financially contributed to the TOE film for your own personal unjust gain – and evidences your intentional and willful deceit to defraud donors, despite repeated notice of your infringement. To date, no response has been provided and review of the respective eBay and IMBD webpages for TOE show that your intentional and willful infringement of my copyright and the Vietnamese Community’s copyright has continued.

In fact, as a contractor-for-hire by VVFH – the representative non-profit agent for the Vietnamese Community’s interest in the TOE film – neither you, Fred Koster nor Koster Films LLC, own any copyright or intellectual property to any versions, regardless of medium, of the TOE film and at least ninety-three (93) interview footages. Thereby, you, Fred Koster and Koster Films LLC, do not have the right to list the TOE film on IMBD or sell any versions of the film on eBay or any other commercial medium. Your continued fraudulent misrepresentation as the copyright holder of the TOE film, continued refusal to immediately relinquish at least the ninety-three (93) interview footages, and continued unauthorized use of my image are gross violations of the law. Unless Fred Koster or Koster Films LLC immediately cease and desist all actions relating to the TOE film and immediately send us the footages of at least ninety-three (93) interviews, I and the Vietnamese Community are prepared to pursue at least the following claims against you, Fred Koster and Koster Films LLC:

- copyright infringement;
- fraud;
- constructive fraud;
- fraudulent concealment;
- fraudulent misrepresentation;
- negligent misrepresentation;
- unjust enrichment;
- breach of fiduciary duty;
- breach of contract;
- breach of implied contract;
- breach of covenant of good faith and fair dealing;
- breach of oral agreement;
- professional negligence;
- defamation per se.

In light of the foregoing, we request that you immediately cease and desist from all unauthorized use of copyright infringement, remove the IMBD page, remove the eBay page, and send us the ninety-three (93) interview footages. If you, Fred Koster or Koster Films LLC, fail to comply, we will pursue all remedies available to us including, but not limited to, commencing an action for injunctive relief and monetary damages. We intend to hold you, Fred Koster and Koster Films LLC, fully responsible for all costs, damages and/or consequences of its actions if you fail to comply with this letter, and immediately refrain from all unauthorized activities.

To the extent that you believe that by remaining silent you can continue your infringement without negative repercussions, we refer you to 15 U.S.C. § 1116, which gives us the right to an injunction against infringement, and 15 U.S.C. § 1117, which gives us the right to, among other remedies, “(1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action.”

Nothing contained in this cease and deist request shall be construed as a waiver of our rights and/or remedies, all of which are expressly reserved. This is the final notice that you will receive before hearing from our law firm. We demand that all infringement cease or we will bring an

infringement action to protect our rights.

Sincerely,

Minh

EXHIBIT B

From: ThucMinh Nguyen <TNguyen@kasowitz.com<<mailto:TNguyen@kasowitz.com>>>
 Date: 5/7/21, 5:56:21 PM PDT
 To: fred@kosterfilms.com<<mailto:fred@kosterfilms.com>>
 <fred@kosterfilms.com<<mailto:fred@kosterfilms.com>>> BT Productions
 <btproductionsaz@gmail.com<<mailto:btproductionsaz@gmail.com>>> BT Productions
 <create@btproductionsmedia.com<<mailto:create@btproductionsmedia.com>>> Brian Tooker
 <briantooker91@gmail.com<<mailto:briantooker91@gmail.com>>>
 Cc: namphu8@gmail.com<<mailto:namphu8@gmail.com>>
 <namphu8@gmail.com<<mailto:namphu8@gmail.com>>>
trucho@sbtn.tv<<mailto:trucho@sbtn.tv>> <trucho@sbtn.tv<<mailto:trucho@sbtn.tv>>>
phi@myvanfilms.com<<mailto:phi@myvanfilms.com>>
 <phi@myvanfilms.com<<mailto:phi@myvanfilms.com>>>
thucnhi4@gmail.com<<mailto:thucnhi4@gmail.com>>
 <thucnhi4@gmail.com<<mailto:thucnhi4@gmail.com>>>
vuthanhthuy@radiosaigonhouston.com<<mailto:vuthanhthuy@radiosaigonhouston.com>>
 <vuthanhthuy@radiosaigonhouston.com<<mailto:vuthanhthuy@radiosaigonhouston.com>>>
trong.phan@gmail.com<<mailto:trong.phan@gmail.com>>
 <trong.phan@gmail.com<<mailto:trong.phan@gmail.com>>>
jane.nguyen@alpharealtors.net<<mailto:jane.nguyen@alpharealtors.net>>
 <jane.nguyen@alpharealtors.net<<mailto:jane.nguyen@alpharealtors.net>>>
tomhoang@hoangla.com<<mailto:tomhoang@hoangla.com>>
 <tomhoang@hoangla.com<<mailto:tomhoang@hoangla.com>>>
ngoan98@yahoo.com<<mailto:ngoan98@yahoo.com>>
 <ngoan98@yahoo.com<<mailto:ngoan98@yahoo.com>>>
duongphuc@radiosaigonhouston.com<<mailto:duongphuc@radiosaigonhouston.com>>
 <duongphuc@radiosaigonhouston.com<<mailto:duongphuc@radiosaigonhouston.com>>>
lienhoahouston13@gmail.com<<mailto:lienhoahouston13@gmail.com>>
 <lienhoahouston13@gmail.com<<mailto:lienhoahouston13@gmail.com>>>
apham2001@yahoo.com<<mailto:apham2001@yahoo.com>>
 <apham2001@yahoo.com<<mailto:apham2001@yahoo.com>>>
dofamily@aol.com<<mailto:dofamily@aol.com>>
 <dofamily@aol.com<<mailto:dofamily@aol.com>>>
nptruong6025@gmail.com<<mailto:nptruong6025@gmail.com>>
 <nptruong6025@gmail.com<<mailto:nptruong6025@gmail.com>>>
ttaitrinh@gmail.com<<mailto:ttaitrinh@gmail.com>>
 <ttaitrinh@gmail.com<<mailto:ttaitrinh@gmail.com>>>
Duong@pragmatics.com<<mailto:Duong@pragmatics.com>>
 <Duong@pragmatics.com<<mailto:Duong@pragmatics.com>>>
jimmcleroy@aol.com<<mailto:jimmcleroy@aol.com>>
 <jimmcleroy@aol.com<<mailto:jimmcleroy@aol.com>>>
richbotkin@icloud.com<<mailto:richbotkin@icloud.com>>
 <richbotkin@icloud.com<<mailto:richbotkin@icloud.com>>>
sherman1@flash.net<<mailto:sherman1@flash.net>>
 <sherman1@flash.net<<mailto:sherman1@flash.net>>>
 Subject: RE: ATTN: Fred Koster - TOE CEASE AND DESIST

Fred Koster, Koster Films LLC, and affiliates:

I write regarding your failure to comply with our cease and desist demands set forth on April 22, 2021 (ThucMinh Nguyen April 22, 2021 Email, Attachment 1) (“[W]e request that you immediately cease and desist from all unauthorized use of copyright infringement, remove the IMDb page, remove the eBay page, and send us the ninety-three (93) interview footages.”).

From April 22, 2021, we have sent at least four cease and desist demand emails, which provide notice of your copyright infringement, demand that you cease and desist, and request a response. To date, you have failed to respond to any of our cease and desist demands. A review of eBay, IMDb, Vimeo, and Through Our Eyes websites shows that your willful infringement of our copyright has continued. Despite repeated requests and confirmation from you and Koster Films LLC for the return of at least ninety-three (93) interviews, we received no footage. Your fraudulent misconduct is malicious and an intentional effort to hold hostage our property by (1) refusing to return all films and related materials, and (2) disseminating false copyright ownership claim to the TOE project.

In fact, despite your admission and acknowledgement on April 23, 2021 that you will be “shutting down the film website and marketing” you maliciously relisted the TOE film on eBay with all proceeds to go directly to you, Fred Koster and Koster Films LLC. (Fred Koster April 23, 2021 Email, Attachment 5). Subsequently on April 25, 2021, eBay notified us that your eBay listing was pending removal. (eBay Listing Removal Pending April 25, 2021 Email, Attachment 2). Immediately on April 26, 2021, you removed such listing (Screenshot of eBay listing removal, Attachment 3) and relisted the TOE film for sale at \$15.99 plus shipment of \$6.95 on a new eBay link, with presale shipment to be sent out by May 14, 2021 (Screenshot of eBay relisting, Attachment 4). In addition, you, Fred Koster, and Koster Films LLC fraudulently claim, without our consent and without authority that you are the copyright owner of the TOE project and falsely listed on eBay, that you, Fred Koster, and Koster Films LLC are the copyright owners. (Screenshot of eBay relisting, Attachment 4).

Compounding your fraudulent misconduct, on the same day that you relisted the TOE film for sale on eBay, on April 26, 2021 – despite your representation on April 23, 2021 that you will be “shutting down the film website and marketing” – you maliciously and intentionally listed the TOE film for not only DVD pre-order, but also, for the first time, permitted streaming for \$9.99 per view through Vimeo on the Through Our Eyes website. (See Screenshot of pre-order and Vimeo streaming available at throughoureyesmovie.com, Attachment 6). Your unauthorized and fraudulent conduct highlights the hypocrisy of your statement when you claimed “[you] made a great film that really tells the South Vietnamese story like it has been never told before.” (Fred Koster April 23, 2021 Email, Attachment 5). Indeed, it is a South Vietnamese story of which you, Fred Koster and Koster Films LLC, Brian Tooker and BT Productions LLC fraudulently claim sole copyright ownership. (See Screenshot of Vimeo Streaming Copyright, Attachment 7; Screenshot of Koster Films LLC Claim Copyright to TOE Website, Attachment 17).

In fact, in an attempt to ensure that we have diligently notified all relevant parties of the current status of your and Koster Films LLC fraudulent conduct, we sent a courtesy email on April 27, 2021 to Brian Tooker and BT Production, who upon information and belief possess all relevant

TOE materials. (April 27, 2021 Email to Brian Tooker and BT Production, Attachment 8). To date, we received no response from either Brian Tooker or BT Productions LLC. On that same day, April 27, 2021, we also filed a copyright infringement notice to Vimeo, upon which Vimeo immediately removed the infringing material. (See Vimeo Removal Notification, Attachment 9). However, on April 28, 2021, upon your and Koster Films LLC instructions, Brian Tooker and BT Production filed a counter copyright claim to the TOE film on Vimeo. (See Vimeo Notification of Counter Copyright Claim, Attachment 10). You, Fred Koster, Koster Films LLC, Brian Tooker, and BT Productions LLC intentionally and willfully deceive others in the belief that you are the copyright owner of the TOE project and have continued to use our Community's good-will to defraud and hold hostage our rightful property in direct violation of well-established Federal and California law. This email serves as a notice that you, Fred Koster, Koster Films LLC, Brian Tooker, and BT Productions LLC are liable for your fraudulent conducts in criminal and civil proceedings in the court of law.

To be clear, as a contractor-for-hire by VVFH and NVPF – the representative non-profit agents for the Vietnamese Community's interest in the TOE film – neither you, Fred Koster, Koster Films LLC, Brian Tooker, nor BT Productions LLC own any copyright or intellectual property to any versions, regardless of medium, of the TOE project. We have complete written documentation and correspondence between VVFH and NVPF, the rightful owners, and you, Fred Koster, Koster Films LLC, Brian Tooker, and BT Productions LLC, requesting your services as contractor-for-hire.

Furthermore, you falsely claim that you have used your “own money, working for free and now owning money to those who worked for me.” (Fred Koster April 23, 2021 Email, Attachment 5). This is completely untrue. As a contractor-for-hire, you have allocated portions of the budget provided for the TOE project for yourself - Fred Koster, Koster Films LLC, Brian Tooker, and BT Productions LLC - in excess of \$245,987.50 with a ten (10) percent contingency fee. (See Budget submitted by Fred Koster and Koster Films LLC, Attachment 11). In fact, you, Fred Koster, Koster Films LLC, Brian Tooker, and BT Productions LLC received over \$268,515 from VVFH and NVPF for the TOE project. Despite repeated request for an itemized expense of the finances wired directly to you, Fred Koster, Koster Films LLC, Brian Tooker, and BT Productions LLC, to date, there has been no accounting provided. (See Accounting of Bank Wired to Koster Films LLC, Attachment 12). You now conveniently claim that you used your own money, worked for free, and now owe money for services rendered during filming the TOE project. Again, these claims are all false. To date, you have refused and still refuse to provide any itemized receipts from the TOE project.

To the extent you are not well versed in the law of copyright infringement, and it appears you are not, the absence of a written contract does not permit you to falsely claim copyright ownership of the TOE project. Indeed, California law is clear that a contract “may be written, oral or inferred from the parties' conduct (the last being called an “implied-in-fact” contract).” *Westside Estate Agency, Inc. v. Randall*, 6 Cal. App. 5th 317, 328 (2016); see also *Retired Employees Assn. of Orange County, Inc. v. County of Orange*, 52 Cal. 4th 1171, 1178 (2011) (“The existence and terms of an implied contract are manifested by conduct. (Civ. Code, § 1621.)

As you are well aware, you have been wired over \$268,515 over the course of approximately

three (3) years from the date of the TOE project conception by VVFH and NVPF. (See Accounting of Bank Wired to Koster Films LLC, Attachment 12). You, Fred Koster, Koster Films LLC, Brian Tooker, and BT Productions LLC were brought onto the project by VVFH and NVPF, and you were provided detailed pitch materials such as concepts, storylines, and other materials wherein you agreed to work as a contractor-for-hire and were properly compensated. (See Bank wire statements and budget). This is more than sufficient to create an implied-in-fact contract under California law. The existence of an implied-in-fact contract here is further evidenced by your course of dealing in connection with the ninety-three (93) interviews and filming, which you were properly compensated. Your, Fred Koster, Koster Films LLC, Brian Tooker, and BT Productions LLC conduct constitutes a clear and blatant violation of California law, including the well-established body of law regarding implied-in-fact contracts.

In addition, your April 23, 2021 email is filled with false statements. First, you do not have a “signed film contract” with me as you have falsely stated. (Fred Koster April 23, 2021 Email, Attachment 5). I volunteered my time and paid for my own expenses for the successful completion of the TOE project and therefore never had a contract for my appearance with VVFH and NVPF, the rightful copyright owner of the TOE film. I never signed, consented, or authorized the public release of my image in the TOE film. I was assured repeatedly by you that no version will be publicly released without my express consent. However, without my knowledge and consent, my image and likeness are published on IMDb, eBay, and streamed on Vimeo.

Second, you claimed that you “made a great film that really tells the South Vietnamese story like it has been never told before.” (Fred Koster April 23, 2021 Email, Attachment 5). Yet the TOE documentary is filled with inaccurate historical footages that do not belong to the Vietnam War or the Vietnam War re-education camps. Despite our repeated requests to remove the inaccurate clips, you have refused. Your conduct exhibited a pattern of behavior that showcases your complete disregard for the accuracy of the documentary. Additionally, your conduct from your time on set for “Ride the Thunder”, under the direction of Richard Botkin, the rightful copyright owner of Ride the Thunder, illustrated an utter and complete lack of knowledge regarding the Vietnam War subject matter. Despite this, in an April 1, 2021 interview with Steven Synder, you proclaimed yourself as an “expert in the Vietnam War” and fraudulently represented that your films are funded by “special interests groups” and “investors.” (Steven Snyder Interview of Fred Koster, available at: <https://anchor.fm/stevensnyder/episodes/Episode-11--Fred-Koster-eu1v32>). These were not and are not films funded by special interest groups or investors. VVFH and NVPF are your employers, and you were the contractor-for-hire who took advantage of our trust and goodwill. Your statements are false and fraudulently misrepresent your role as a contractor-for-hire in both the TOE project and Ride the Thunder films. We demand acknowledgement that you, Fred Koster, Koster Films LLC, Brian Tooker, and BT Productions LLC do not have any copyright and/or intellectual property to any versions of the TOE and Ride the Thunder productions. Be advised that Mr. Richard Botkin has agreed to join our criminal and civil actions against you, Fred Koster, Koster Films LLC, Brian Tooker, and BT Productions LLC.

This email serves to put you on notice that we are acquiring legal representation and will be pursuing both criminal and civil proceedings against you, Fred Koster and Koster Films LLC for

at least the following claim of actions: copyright infringement; fraud; constructive fraud; fraudulent concealment; fraudulent misrepresentation; negligent misrepresentation; unjust enrichment; breach of fiduciary duty; breach of contract; breach of implied contract; breach of covenant of good faith and fair dealing; breach of oral agreement; professional negligence; defamation per se; and tortious interference.

We therefore demand (i) that you cease and desist further dissemination of false copyright ownership claim to TOE production; (ii) immediately return at least ninety-three (93) interview footages, all related footages, and materials related to the TOE project; (iii) cease all sales on eBay, Vimeo, and any other commercial medium; (iv) cease and desist further dissemination of false copyright ownership claim to Ride the Thunder production; (v) return all footages, related footages, and materials related to the Ride the Thunder production; and (vi) promptly publish appropriate retractions and corrections to false statements made as to your illicit copyright ownership of the abovementioned productions. To be clear, we are proceeding with all criminal and civil proceedings against you, Fred Koster, Koster Films LLC, Brian Tooker, and BT Productions. We will take all and every precaution to ensure that television and radio networks who have conducted an interview of our TOE project are notified of the criminal and civil proceedings against you, Fred Koster, Koster Films LLC, Brian Tooker, and BT Productions – it is our duty and responsibility to notify the thousands of donors who contributed to the TOE project.

Be advised that our claims herein are serious and should not be taken lightly. On “Through Our Eyes” website, you, Fred Koster, claims that “Koster Films is excited to announce the completion and release of the historic film, Through our Eyes - The Vietnam War. Unfortunately, Koster Films has received threats if we continue to release this film. Currently, there are investigations of these threats.” (See Screenshot of Through Our Eyes website, Attachment 13).

Our counsel will send you a formal demand letter stating our claim of actions against you and prayers for relief, including but not limited to: (1) the entire sum of the contract at least in the amount of \$268,515; (2) statutory damages in at least \$150,000 as set forth in §504(c)(2) therein; (3) injunctive relief pursuant to 15 USC §1116, (4) attorney costs and fees pursuant to 15 USC §1117; and (5) treble punitive damages pursuant to Cal Civ §1770(a)(4) – total liable economic damages in excess of \$2,000,000 against you, Fred Koster, Koster Films LLC, Brian Tooker, and BT Productions LLC. In addition, we are in discussion with the District Attorney Office and will set forth a meeting to commence a formal criminal complaint wherein an audit of you, Fred Koster, Koster Films LLC, Brian Tooker, and BT Productions LLC will commence immediately.

In addition, be advised that it is upon information and belief that Heidi Koster is the key principal of Koster Films LLC and will be a party to our actions against you, Fred Koster and Koster Films LLC. (See Heidi Koster – Koster Films LLC, Attachment 14) (“Key Principal: Heidi Koster”). Upon information and belief your, Fred Koster and Koster Films LLC address for legal service is 3655 W Anthem Way, Anthem Arizona, 85086, Maricopa County. (Koster Films LLC Arizona Corporation Commission, Attachment 15). Upon information and belief, Brian Tooker and BT Productions LLC address for legal service is 1952 E Ebony Pl, Chandler, Arizona 85286. (BT Productions LLC Arizona Corporation Commission, Attachment 16).

In the meantime, you, Fred Koster, Koster Films LLC, Brian Tooker, and BT Productions are directed to maintain and preserve any and all communications and documents concerning the TOE and Ride the Thunder productions in your possession, custody, and/or control, including but not limited to, emails, instant-message communications, notes, telephone records, text messages and computer files. Nothing contained in or omitted from this letter is, or should be construed as, a limitation, restriction or waiver, express or implied, of any of our rights and remedies in connection with the matters raised herein, all of which are expressly reserved.

Regards,
Minh

ThucMinh Nguyen
Kasowitz Benson Torres LLP
333 Twin Dolphin Drive, Suite 200
Redwood Shores, CA 94065
Tel. (650) 453-5420
Fax. (650) 362-9302
TNguyen@kasowitz.com<<mailto:TNguyen@kasowitz.com>>

EXHIBIT C

From: ThucMinh Nguyen <TNguyen@kasowitz.com>

Date: 4/26/21, 1:49:20 PM PDT

To: BT Productions <btproductionsaz@gmail.com> BT Productions <create@btproductionsmedia.com>
briantooker91@gmail.com <briantooker91@gmail.com>

Cc: thucnhi4@gmail.com <thucnhi4@gmail.com> namphu8@gmail.com <namphu8@gmail.com> trucho@sbtn.tv
<trucho@sbtn.tv> phi@myvanfilms.com <phi@myvanfilms.com>

Subject: Through Our Eyes: The Vietnam War

Brian,

Hope you've been well. I have enjoyed our past interactions and wanted to provide you with an opportunity to be informed of the current status of the TOE project as it relates to Fred Koster. I am not sure if you are aware of the extent of Fred's actions concerning the TOE project. However, I'm writing this email for your awareness as a courtesy.

It is with a heavy heart that I write to you regarding the Vietnamese Community's pending lawsuit against Fred Koster and Koster Films LLC as it relates to the Through Our Eyes: The Vietnam War project (the "TOE" project). It is our understanding that you have in your possession at least 93 interviews in their native form and all related materials (including all film) of the TOE project. These interviews and related materials are the intellectual property of the Vietnamese Community. Fred was a contractor-for-hire for the TOE project, and has no ownership rights to any assets from or created by the TOE project. We therefore respectfully request that you immediately return all of the footage of the 93 interviews in their native format as well as all related materials of the TOE project to the following address:

Kasowitz Benson Torres LLP

ATTN: Through Our Eyes: The Vietnam War

333 Twin Dolphin Dr Suite 200

Redwood City, CA 94065

For your awareness, Fred has sold DVD copies of the TOE project as well as copies in other commercial mediums through eBay and a website he has created, with no consent or authorization from the Vietnamese Community. Despite our repeated requests, Fred has refused to return our property, including all footage filmed during the TOE project, as well as has refused to take down his listings for the illicit sale of the film. Thus, the Vietnamese Community is pursuing at least the following civil and criminal claims against Fred Koster and Koster Films LLC:

- copyright infringement;
- fraud;
- constructive fraud;
- fraudulent concealment;
- fraudulent misrepresentation;
- negligent misrepresentation;
- unjust enrichment;
- breach of fiduciary duty;

- breach of contract;
- breach of implied contract;
- breach of covenant of good faith and fair dealing;
- breach of oral agreement;
- professional negligence;
- defamation *per se*.

We would like to resolve this matter amicably with you prior to naming you as a joint defendant with Fred Koster and Koster Films LLC. We understand that you may be the party who facilitated the technical implementation of the website, filming and editing, and that you are in possession of the 93 interviews. We would like to avoid any unnecessary legal actions against you and your company, BT Productions, in the pending litigation against Fred Koster and Koster Films LLC. Therefore, we request that you immediately return our property.

Should we not receive a response from you by end of business day Tuesday, April 27th, we will unfortunately be forced to include you in the present litigation against Fred Koster and Koster Films LLC as a joint defendant with at least the above civil and criminal claims. This means that you and BT Productions will be jointly and severally liable with Fred Koster and Koster Films LLC in the pending civil and criminal lawsuit for at least the above claims. Nothing contained in this request shall be construed as a waiver of our rights and/or remedies, all of which are expressly reserved.

We are available to discuss the above via a conference call and welcome any questions you may have.

Regards,
Minh

ThucMinh Nguyen
Kasowitz Benson Torres LLP
333 Twin Dolphin Drive, Suite 200
Redwood Shores, CA 94065
Tel. (650) 453-5420
Fax. (650) 362-9302
TNguyen@kasowitz.com

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EXHIBIT D



Fred K <fknotebook@gmail.com>

Fwd: Your Vimeo video has been removed for copyright infringement

1 message

Brian Tooker <briantooker91@gmail.com>
To: "fred kosterfilms.com" <fred@kosterfilms.com>

Tue, Apr 27, 2021 at 9:22 PM

----- Forwarded message -----

From: **Vimeo** <no-reply@vimeo.com>
Date: Tue, Apr 27, 2021 at 9:20 PM
Subject: Your Vimeo video has been removed for copyright infringement
To: <briantooker91@gmail.com>



Dear BT Productions:

Your video titled "Through Our Eyes" (<https://vimeo.com/536022661>) was removed on Apr 28, 2021 in response to a takedown notice submitted by ThucMinh Nguyen based on "throughoureyesmovie" pursuant to the Digital Millennium Copyright Act ("DMCA").

Why did this happen?

We removed your video because a third party claims that your video infringes its copyright. The DMCA requires Vimeo to remove allegedly infringing content upon receipt of a valid takedown notice.

Who submitted this takedown?

The takedown notice was sent by:
Copyright Holder: ThucMinh Nguyen
Address: 10216 Park Cir E City, State, and Zip: Cupertino, CA 95014
Phone number: (408) 890-0354
Email address: Thucminh.n@gmail.com

Can I challenge this removal?

If you believe that the third party claim was mistaken, you may challenge it by filing a counter-notification form, available here: https://vimeo.com/dmca#counter_notification. Please read our full DMCA policy for more information on the counter-notification process.

Alternately, you may contact the copyright holder (or representative) directly and ask them to withdraw their claim.

Will anything happen to my Vimeo account status?

This takedown will count as a copyright “strike” against your account. If you receive three unresolved copyright strikes, we will disable your account under our repeat infringer policy: https://vimeo.com/dmca#repeat_infringer.

You can review any copyright strikes your account receives here:
<https://vimeo.com/settings/videos/dmca>.

You can also learn more about dealing with DMCA strikes in our Help Center here:
<https://help.vimeo.com/hc/en-us/sections/203914978-DMCA>

We strongly suggest that you carefully review the remaining videos in your account to make sure there are no videos that may infringe upon the rights of others. If you are in doubt as to whether a particular video infringes upon another’s rights, you should remove it. Finally, you should ensure that all future videos you upload do not infringe any other person’s rights.

Sincerely,
Vimeo, Inc.



If you wish to unsubscribe, or change your notification settings: [click here](#).

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--
-Brian Tooker- www.briantooker.com

EXHIBIT E

ThucMinh Nguyen

From: ThucMinh Nguyen <thucminh.n@gmail.com>
Sent: Thursday, May 6, 2021 6:19 PM
To: ThucMinh Nguyen
Subject: Fwd: VeRO Program -- eBay Listing Removal Pending

****EXTERNAL EMAIL****

Begin forwarded message:

From: vero@ebay.com
Date: April 25, 2021 at 8:45:12 PM PDT
To: thucminh.n@gmail.com
Subject: VeRO Program -- eBay Listing Removal Pending

Thank you for contacting us.

We are pleased to inform you that the following listing(s) you reported are in the process of being removed from eBay in response to the Notice of Claimed Infringement you recently sent:

kosterfilms-llc
124683016989

Once removed (typically within 48 hours) we will notify the seller and all participating bidders that the listing(s) has been removed due to your request.

If the Notice of Claimed Infringement contained items that are not listed above you will receive a separate email communication about those items. These notices may arrive at different times (over a period of up to several hours) as items for different sellers are processed separately.

If you should have any questions or concerns regarding this matter, please do not hesitate to contact us again.

VeRO Program
eBay Trust & Safety

EXHIBIT F

Talent Release Form

Through Our Eyes (working title)

I hereby agreed to participate as indicated in the above video (film) production. In consideration of my appearance in the video, and without any further consideration, I hereby grant permission to the film production of Through Our Eyes to utilize my appearance in connection with the film and to use my performance, name, and/or voice. I hereby authorize the film production to photograph and record, the performance; to edit the same at its discretion and to include it with the performance of others and with sound effects, special effects, and music. I agree that my participation in the film may be edited or excluded completely. I expressly release to KosterFilms LLC, their employees, and their licensees from and against any and all claims to the invasion of privacy, defamation, film ownership or any other cause of action arising out of production, distribution, broadcast or exhibition of the video. By signing below I hereby agree to these terms.

ThucMinh Nguyen
10216 Park Circle East apt 1 Cupertino CA 95014

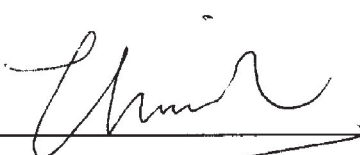
 1/10/20

EXHIBIT G



Fred K <fknotebook@gmail.com>

Fwd: Your Vimeo video has been removed for copyright infringement

1 message

Brian Tooker <briantooker91@gmail.com>
To: "fred kosterfilms.com" <fred@kosterfilms.com>

Tue, Apr 27, 2021 at 9:22 PM

----- Forwarded message -----

From: **Vimeo** <no-reply@vimeo.com>
Date: Tue, Apr 27, 2021 at 9:20 PM
Subject: Your Vimeo video has been removed for copyright infringement
To: <briantooker91@gmail.com>



Dear BT Productions:

Your video titled "Through Our Eyes" (<https://vimeo.com/536022661>) was removed on Apr 28, 2021 in response to a takedown notice submitted by ThucMinh Nguyen based on "throughoureyesmovie" pursuant to the Digital Millennium Copyright Act ("DMCA").

Why did this happen?

We removed your video because a third party claims that your video infringes its copyright. The DMCA requires Vimeo to remove allegedly infringing content upon receipt of a valid takedown notice.

Who submitted this takedown?

The takedown notice was sent by:
Copyright Holder: ThucMinh Nguyen
Address: 10216 Park Cir E City, State, and Zip: Cupertino, CA 95014
Phone number: (408) 890-0354
Email address: Thucminh.n@gmail.com

Can I challenge this removal?

If you believe that the third party claim was mistaken, you may challenge it by filing a counter-notification form, available here: https://vimeo.com/dmca#counter_notification. Please read our full DMCA policy for more information on the counter-notification process.

Alternately, you may contact the copyright holder (or representative) directly and ask them to withdraw their claim.

Will anything happen to my Vimeo account status?

This takedown will count as a copyright “strike” against your account. If you receive three unresolved copyright strikes, we will disable your account under our repeat infringer policy: https://vimeo.com/dmca#repeat_infringer.

You can review any copyright strikes your account receives here:
<https://vimeo.com/settings/videos/dmca>.

You can also learn more about dealing with DMCA strikes in our Help Center here:
<https://help.vimeo.com/hc/en-us/sections/203914978-DMCA>

We strongly suggest that you carefully review the remaining videos in your account to make sure there are no videos that may infringe upon the rights of others. If you are in doubt as to whether a particular video infringes upon another’s rights, you should remove it. Finally, you should ensure that all future videos you upload do not infringe any other person’s rights.

Sincerely,
Vimeo, Inc.



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--
-Brian Tooker- www.briantooker.com

EXHIBIT H

Talent Release Form

Through Our Eyes (working title)

I hereby agreed to participate as indicated in the above video (film) production. In consideration of my appearance in the video, and without any further consideration, I hereby grant permission to the film production of Through Our Eyes to utilize my appearance in connection with the film and to use my performance, name, and/or voice. I hereby authorize the film production to photograph and record, the performance; to edit the same at its discretion and to include it with the performance of others and with sound effects, special effects, and music. I agree that my participation in the film may be edited or excluded completely. I expressly release to KosterFilms LLC, their employees, and their licensees from and against any and all claims to the invasion of privacy, defamation or any other cause of action arising out of production, distribution, broadcast or exhibition of the video. By signing below I hereby agree to these terms.

Nam Pham
namphu8@gmail.com
nam.pham@post.harvard.edu
5 Bayside Road, Quincy MA 02172

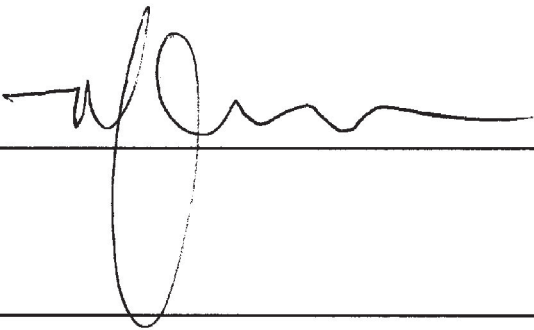
A handwritten signature in black ink, appearing to read 'Nam Pham', is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end. Below the first line, there are two more horizontal lines, but they are empty.

EXHIBIT I



ThucMinh Nguyen <thucminh.n@gmail.com>

Response to your Vimeo DMCA claim

Vimeo <no-reply@vimeo.com>
Reply-To: Vimeo <dmca@vimeo.com>
To: Thucminh.n@gmail.com

Tue, Apr 27, 2021 at 9:20 PM



Dear THUCMINH NGUYEN:

We are writing in response to the Digital Millennium Copyright Act ("DMCA") takedown notice that you provided to us (the "Notice").

Please note that, as of the date hereof, Vimeo, Inc. has:

- Removed or disabled access to the material on Vimeo that you identified in the Notice;
- Where such material formerly appeared on Vimeo, posted a statement that Vimeo has removed such material as a result of a third-party notification claiming that such material is infringing; and
- Notified the persons that posted the material in question that Vimeo has removed or disabled access to such material as a result of a third-party notification claiming that such material is infringing.

This letter, and the actions taken as described herein, do not and shall not constitute or be construed as an admission of liability or wrongdoing whatsoever on our part, including any infringement (direct, contributory or vicarious) by us of any intellectual property or other rights, and do not constitute and shall not be deemed to constitute any waiver, release or impairment of any kind of any of our rights available to us at law or in equity, all of which are hereby expressly reserved.

Furthermore, this letter, and the actions taken as described herein do not constitute, and shall not be construed as, an agreement or course of dealing by us to in the future take any action or refrain from taking any action.

We trust that this concludes this matter.

Very truly yours,
Vimeo, Inc.



If you wish to unsubscribe, or change your notification settings: [click here](#).

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EXHIBIT J



Fred K <fknotebook@gmail.com>

Your listing isn't following policy: VeRO Unauthorized Item Policy

1 message

no.reply@ebay.com <no.reply@ebay.com>
To: fred@kosterfilms.com

Wed, Apr 28, 2021 at 12:49 AM



Your listing isn't following policy: VeRO Unauthorized Item Policy

Hello kosterfilms-llc,

Your listing didn't follow our VeRO Unauthorized Item Policy.. Unauthorized copies or counterfeits are illegal and not allowed on eBay

What activity didn't follow the policy

More specific details are provided below.

What you need to do next

Items removed for this policy cannot be relisted. Please ensure that your future listings are for authentic items only. For these items, they should be described accurately and completely, so buyers know that it is an authentic item.

What is the policy

- Your listing was reported by ThucMinh Nguyen for violating their copyright.. eBay's Verified Rights Owner (VeRO) program offers intellectual property rights owner(s) a way to report listings that they believe infringe on their rights
- Unauthorized copies of copyrighted material are illegal, and not allowed on eBay
- If you believe a mistake has been made, you will need to contact the rights owner directly. If the rights owner approves your appeal, please have them contact us directly to reinstate your listing(s)

You can send an email to:

thucminh.n@gmail.com

How this affects your account

- Listings that don't follow this policy have been ended.
- We have credited all associated fees except for payments processing fees and the final value fee for your listing(s).
- Other than actions previously communicated to you in prior emails, no further actions are being placed on your account..

Why we have this policy

This policy helps to ensure that eBay users trust our marketplace, and comply with the law.

More information and help

<https://www.ebay.com/help/policies/listing-policies/selling-policies/intellectual-property-vero-program?id=4349>

Listings that don't follow policy

124697125524 - Through Our Eyes - The Vietnam War (Premiere DVD)
Presale-shipment date May 14

We appreciate your understanding.

Thanks,
eBay

Please don't reply to this message. It was sent from an address that doesn't accept incoming email.

eBay Document ID: 99933713004

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EXHIBIT K

Confidential Settlement Agreement, Release, and Covenant Not to Sue

This Confidential Settlement Agreement, Release, and Covenant Not to Sue, dated as of May __, 2023 (“**Agreement**”), is made by between Brian Tooker (“**Tooker**”) and BT Production LLC (“**BT**,” and together with Tooker, the “**Tooker Parties**”) on the one hand, and Frederick Koster (“**Koster**”) and Koster Films, LLC (“**KF**,” and together with Koster, the “**Koster Parties**”) on the other hand. The Tooker Parties and Koster Parties are collectively known as the “**Parties**.”

Recitals

A. The Koster Parties hired the Tooker Parties for the making of a film, “Through Our Eyes: The Vietnam War” (the “**Film**”). Pursuant to their agreement, Koster was the Producer, Director, and Writer, while Tooker was the cinematographer and film editor of the Film. In the course of making the Film, Koster and Tooker recorded interviews and other original footage (the “**Additional Footage**”), excerpts of which were later incorporated into the Film. Koster asserts, and Tooker does not dispute, that their agreement was a work-for-hire agreement.

B. As the cinematographer and film editor, Tooker presently has in his possession the original, editable footage of the Film and the Additional Footage, as well as copies thereof, saved on multiple hard drives.

C. At present, BT and KF are listed as coauthors of the Film in Copyright Registration No. PA0002316073.

D. Koster asserts that he solely and exclusively owns the Additional Footage, including interviews of individuals conducted during the course of the Film production. Koster further asserts that he solely and exclusively owns additional interviews that he conducted unrelated to the Film production that the Tooker Parties may presently have in their possession. The Tooker Parties assert no claims of ownership regarding the Additional Footage or such other additional interviews described in this paragraph.

E. On November 23, 2022, The Next Vietnam Projects Foundation, Inc., Radix Corporation a/k/a Vietnam Veterans for Factual History, Saigon Broadcasting Television Network, Inc., My Van International, Inc., Nam Pham, Carina Oanh Hoang, Diep Phan, Trong Phan, Son Nguyen, Thanh-Mai Nguyen, and Minh Nguyen sued KF, Koster, BT, and Tooker in the lawsuit captioned *The Next Vietnam Projects Foundation, Inc. v. Koster Films, LLC*, No. 8:22-cv-2130 (C.D. Cal.) (the “**NVPF Lawsuit**”).

F. Tooker and BT have settled the claims against them in the NVPF Lawsuit.

G. In light of the NVPF Lawsuit, to avoid the expense and business interruption associated with the NVPF Lawsuit, and to avoid the possibility of litigation between themselves, the Parties agree, in consideration of the mutual promises set forth herein, the sufficiency of which is hereby acknowledged, to settle as follows:

Terms and Conditions

1. **Film and Additional Footage.** The Koster Parties agree to help the Tooker Parties so that, with no compensation owed to any party, the Tooker Parties shall be permitted to (a) provide to The Next Vietnam Projects Foundation or its designee(s) hard drives containing a copy of the original, editable footage of the Film and a copy of the original, editable Additional Footage; and (b) retain a copy of the original, editable footage of the Film and the original, editable Additional Footage pending the resolution of the NVPF Lawsuit or unless otherwise ordered by a court, provided that the Tooker Parties shall not claim any ownership rights in the Additional Footage. By agreeing to the terms of this Agreement, the Koster Parties do not relinquish any of their rights to their ownership of the Film and Additional Footage. The Agreement is not an authorization by the Koster Parties for any third-party use of the Film and Additional Footage.

2. **Copyright Interest.** The Koster Parties agree that, with no compensation owed to the Koster Parties, BT may relinquish, abandon, disclaim, or otherwise terminate any interest BT has in the Film's copyright, including by requesting that the United States Copyright Office record a statement of BT's intention to relinquish its rights in the copyright of the Film, which statement may be signed and may identify the title, registration number, and date of publication or registration. Neither BT nor Tooker makes any representations regarding the legal effect of recording a statement of abandonment. The Tooker Parties have not assigned, and have not agreed to assign, BT's interest in the Film's copyright to any of the plaintiffs in the NVPF Lawsuit or to any third parties related to such plaintiffs, and the Koster Parties do not consent to such an assignment.

3. **Mutual Releases and Covenants Not to Sue.** Upon execution of this Agreement, the Parties mutually release, remise, and forever discharge each other and each other's past, present, and future agents, employees, attorneys, representatives, administrators, principals, partners, members, owners, directors, officers, joint venturers, affiliates, sureties, subsidiaries, divisions, creditors, parents and affiliated entities, predecessors, successors, assigns, stockholders, servants, trusts, trustees, heirs, administrators, beneficiaries, holding companies, claims administrators, insurers, reinsurers, third-party administrators, underwriters, and each of them, from any and all claims, duties, demands, suits, rights, causes of action, obligations, liabilities, liens, damages, debts, injuries, losses, fines, penalties, costs, attorneys' fees and/or expenses of every kind and nature whatsoever, whether known or unknown, existing on or before the effective date of this Agreement, whether in contract, equity, statute, tort, or otherwise, that concern, relate to, or arise out of the Film, the Additional Footage, or anything subsumed therein. Each Party further covenants not to sue the other Party with respect to the matters released herein. The Koster Parties further covenant not to sue the Tooker Parties for providing or retaining copies of the Film and Additional Footage as provided in Paragraph 1, and for disposing of any copyright interest as provided in Paragraph 2. To avoid doubt or uncertainty, this Paragraph 3 does not extend to the enforcement of this Agreement.

4. **Entire Agreement.** This Agreement constitutes the sole, complete, and fully integrated agreement with respect to the claims released herein. It supersedes all prior written or oral agreements or communications between the Parties regarding the subject matter contained

therein. In entering into this Agreement, the Parties have not relied on any representations or understandings not reflected therein. The Parties freely enter into this Agreement and agree that this Agreement is valid and binding regardless of any information that may be unknown to them or otherwise later determined to be relevant to their decision to enter into this Agreement.

5. **Advice of Counsel.** The Parties have had a full and complete opportunity to obtain and rely on legal counsel of their choosing, and the drafting of the Agreement was a common endeavor of the Parties and their respective legal counsel, if any.

6. **Severability.** If any part of this Agreement is judicially determined to be unenforceable, then when possible, but only if consistent with the purpose of the Agreement, any such unenforceable provision may be reformed and then enforced as reformed and the remainder of the Agreement shall remain valid and enforceable unless it defeats its fundamental purpose, which is to settle the claims asserted in the Lawsuit.

7. **Confidentiality.** Except as necessary to carry out the purposes of this Agreement, or as necessary to obtain appropriate legal, insurance, tax, or financial advice concerning the provisions of this Agreement, the Parties agree that the terms of this Agreement shall remain confidential and shall not be disclosed to any other person or entity unless (a) both Parties agree, in writing, to do so or (b) the Parties are required by legal process to do so. The Parties further agree that if they are required by legal process to disclose information concerning this Agreement, they will provide the other Parties with at least 10 business days' notice before the required disclosure.

8. **Recitals and Headings.** All recitals are incorporated in this Agreement by reference. Paragraph headings may not be interpreted to limit the scope of the subject matter addressed.

9. **Applicable Law.** Arizona law shall apply and govern this Agreement, and any suit to enforce it shall be filed in the Maricopa County Superior Court or in the U.S. District Court for the District of Arizona. The breach of this Agreement shall give rise only to a cause of action for specific performance or to recover damages arising from the breach and shall not reinstate the claims and liabilities released, nor shall any such breach entitle either Party to rescind this Agreement and any such rescission rights are expressly waived.

10. **Effective Date.** The Effective Date of this Agreement is the date upon which it has been signed by all Parties.

11. **Counterparts and Authority to Execute.** The signing of this Agreement shall be notarized and may be signed in counterparts, each of which is considered an original, but all of which shall constitute one and the same instrument. Each individual signing this Agreement warrants and represents that he or she has full authority and is duly authorized and empowered to execute this Agreement on behalf of the Party for which he or she signs and for the purposes set forth in this Agreement.

[SIGNATURES ON NEXT PAGE]

KOSTER FILMS, LLC

An Arizona Limited Liability Company

By: _____
Frederick Koster
Its Manager

Dated: _____

FREDERICK KOSTER

By: _____
Frederick Koster

Dated: _____

BT PRODUCTION LLC

An Arizona Limited Liability Company

By: _____
Brian Tooker
Its Manager

Dated: _____

BRIAN TOOKER

By: _____
Brian Tooker

Dated: _____

Frederick Koster
1846 Innovation Park Dr, #100 Oro Valley, AZ 85755
602-451-0999
fredkusa1@gmail.com
Frederick Koster in Pro Per

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**NEXT VIETNAM PROJECTS
FOUNDATION, INC., ET AL
Plaintiffs**

Case No.: 8:22-cv-2130- JWHDFM

**FREDERICK KOSTER'S
DECLARATION IN SUPPORT OF
DEFENDANT'S COUNTERCLAIMS**

v.

**KOSTER FILMS LLC,
FREDERICK KOSTER, ET AL
Defendants**

**District: Hon. John W Holcomb
Mag. Judge: Hon Douglas F McCormick**

1. I, Frederick Koster. Declares as follows:
2. I have personal knowledge of the following facts, and if called as a witness, I could and would competently testify thereto.
3. I have a written Talent Release Form contract with Minh Nugyen. (Exhibit F)
4. I have a written Talent Release Form contract with Nam Pham. (Exhibit H)
5. I have a written permission agreement by way of emails with My Van International Inc.
6. I have no contract in any form with Radix Foundation Corp, Saigon Broadcasting Television Network, Next Vietnam Projects Foundation Inc.
7. The individual Plaintiffs who did appear in the film, as stated in the Plaintiffs complaint, all agreed to appear in the film.
8. Plaintiffs currently have in their unauthorized possession Koster's copyright film, interviews, and related film materials, in which they received from former codefendant Brian Tooker by way of their settlement agreement.
9. I have not given permission for Plaintiffs to have my property.
10. I have asked the Plaintiffs' attorney on three different occasions to return my property and was rejected.
11. I have emailed and asked numerous times for the return of my property from former codefendant's attorney but was rejected because he said he could not return my property because in their settlement agreement with

Plaintiffs, it was demanded that Koster's property can not be returned to him.

12. Koster's film property that is in the Plaintiffs' unauthorized possession is evidence for the trial and they are withholding my own property from me to use in court.
13. I tried to release my copyrighted film through my distributors but was stopped by Minh Nguyen DMCA copyright takedowns. From the notices that I received from my distributors, Minh Nguyen claimed in her takedowns that she was the copyright holder. (Exhibits D, E, G, I, J)
14. I had to refund customers' money because of Minh Nguyen's DMCA takedown notices.
15. I received at least two Cease and Desist/ Demand emails from Minh Nguyen that were cc'd to about 22 people stating that she has no contract with me to be in the film along with other defamation towards me.
16. I had two Conference telephone calls that were designated for the Rule 26 f report with Jacob Poorman on June 26, 2023 and June 30, 2023.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 8, 2023, in Phoenix, Arizona

Frederick Koster

Frederick Koster in Pro Per

NAME, ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY(S)
OR OF PARTY APPEARING IN PRO PER
Frederick Koster
1846 Innovation Park Dr, #100 Oro Valley, AZ 85755
602-451-0999
fredkusal@gmail.com
Frederick Koster in Pro Per

ATTORNEY(S) FOR: Defendant in Pro Per

FILED
CLERK, U.S. DISTRICT COURT
6/9/23
CENTRAL DISTRICT OF CALIFORNIA
BY: cla DEPUTY

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NEXT VIETNAM PROJECTS FOUNDATION, INC., ET AL Plaintiff(s),	CASE NUMBER: Case No.: 8:22-cv-2130- JWHDFM
v. KOSTER FILMS LLC, FREDERICK KOSTER, ET AL Defendant(s)	CERTIFICATION AND NOTICE OF INTERESTED PARTIES (Local Rule 7.1-1)

TO: THE COURT AND ALL PARTIES OF RECORD:

The undersigned, counsel of record for DEFENDANT
or party appearing in pro per, certifies that the following listed party (or parties) may have a pecuniary interest in
the outcome of this case. These representations are made to enable the Court to evaluate possible disqualification
or recusal.

(List the names of all such parties and identify their connection and interest. Use additional sheet if necessary.)

PARTY	CONNECTION / INTEREST
Koster Films LLC	DEFENDANT
Frederick Koster	DEFENDANT
Brian Tooker	DEFENDANT
BT Productions LLC	DEFENDANT
Next Vietnam Projects Foundation, Inc	PLAINTIFF
Radix Corporation	PLAINTIFF
Saigon Broadcasting Network, Inc	PLAINTIFF
My Van International, Inc	PLAINTIFF
Nam Pham	PLAINTIFF
Carina Oanh Hoang	PLAINTIFF
Diep Phan	PLAINTIFF
Trong Phan	PLAINTIFF
Son Nguyen , Thanh-Mai Nguyen , Minh Nguyen	PLAINTIFF, PLAINTIFF, PLAINTIFF

June 8, 2023
Date

Frederick Koster
Signature

Attorney of record for (or name of party appearing in pro per):

Frederick Koster in pro per